

PREFACE.

—o—

The necessity of a book like this is so well established that it requires no explanation for its publication. But as the plan of the work is quite different from that of other publications of similar nature, I think it my duty to speak a few words regarding the general plan of the work.

This publication is intended to contain all the Unrepealed Acts of the Governor General in Council from 1834 upto 1921 in chronological order. The advantages of such a publication is that in one book, one will find all the Acts passed by the G. G. in council and if he subscribes to our yearly Acts this book will never be out of date. In this volume, I have added case notes, in all the Acts save and except in certain very important ones such as the Indian Penal Code, Succession Act the Indian Evidence Act and the Contract Act. The object of this plan is to reduce the volume of the work and at the same time to save duplication of cost on the part of our subscribers, in as much as almost all our subscribers have got annotated editions of those Acts. In future volumes also, we shall adopt the same plan. Case-notes under the Civil Procedure Code, The Transfer of Property Act, the Indian Limitation Act, The Criminal Procedure Code, and the Bengal Tenancy Act will not be given. All the other Acts will be fully annotated.

In this volume all the amendments upto 1921 have been incorporated. In continuation of this publication I have been publishing case-noted yearly Acts from 1922 and as such those who desire may keep the publication up to date by subscribing to it. In compiling case-notes I have consulted the All India Civil and Criminal Digests by T. V. Sunjib Row, Desai's Century Digest and Narain Swamy Iyres yearly Digests and as such I express my indebtedness to them.

To enhance the usefulness of the publication, I have given a Chronological Table, showing how far each act has been repealed, amended or otherwise modified. An Index has also been appended at the end of the volume.

Lastly I think it my duty, to apologize to my subscribers for the delay in bringing out this publication, but I assure them that in publishing future parts this delay will be more than compensated. I also heartily thank them for the patience with which they awaited the completion of this volume.

KONNAGAR,

The 21st September, 1922.

NRISINHADAS BASU.

8625

In Memory of--

My Father,

Late Babu Dinonath Basu,

This Book is respectfully Dedicated

THE UNREPEALED ACTS

OF THE GOVERNOR-GENERAL IN COUNCIL.

TABLE OF CONTENTS.

Year	No	Subject-matters	Page.
1834	II	Secretaries to Government ...	1
1835	XIX	Asst. to Agent for Sardars in Dekkhan...	2
1836	X	Bengal Indigo Contracts* ...	3
"	XX.	Batwaras ...	4
"	XXI.	Bengal Districts* ...	5
1837	IV.	Property in Land ...	6
"	XX.	Immoveable Property Srait Settlement...	7
"	XXXVI.	The Madras Public Property Malver- sation Act 1837 ...	8
1838	XVI	Suits, Bombay ...	8
"	XIX	Coasting Vessels, Bombay ...	10
"	XXV.	Wills ...	13
1839	VII.	Madras Rent and Revenue Sales ...	22
"	XX.	Levy of Haqq, Bombay ...	23
"	XXIV.	Gangam and Vizagapatam ...	24
"	XXIX	Dower ...	26
"	XXX	Inheritance ...	29
"	XXXII.	Interest ...	34
1840	VIII.	Panchayats, Madras ...	37
"	XV	Agents of Foreign Sovereigns, Bombay...	37
1841	X.	Registry of Ships ...	39
"	XII.	Bengal Land-revenue Sales* ...	53
"	XIX	Succession (Property Protection) ..	54
"	XXIV.	Illusory Appointments: Infant Property	61
1843	V	Indian Slavery ...	65
1844	VI.	Inland Customs, Madras ..	67
"	XIX	Abolition of Town-duties, Bombay ...	70
1846	I.	Legal Practitioners 1 1846 ...	71
1847	IX.	Bengal Alluvion and Dilluvion* ...	73
1848	XV.	Supreme Courts' Officers Trading ...	75
"	XX.	Bengal Landholders' Attendance* ...	76
1849	X.	Commissioner of Revenue, Madras ...	78
1850	V.	Indian Coasting Trade ...	79
"	XI.	Indian Registration of Ships Act (1841) Amendment... ..	80
"	XII.	Public Accountants' Defaults ...	81
"	XVIII.	Judicial Officers' Protection ...	83

*This title has been given by the Repealing and Amending Act I. of 1908.

Year.	No.	Subject-matter.	Page.
1850	XIX.	Apprentices ...	81
"	XXI.	Caste Disabilities Removal ...	93
"	XXIII.	Calcutta Land-revenue* ...	94
"	XXV.	Forfeited Deposits ...	97
"	XXXIV.	State Prisoners ...	98
"	XXXVII.	Public Servants (Inquiries) ...	100
1851	VIII.	Indian Tolls ...	102
"	XII.	Land-revenue, Madras Town ...	108
1852	VI.	Sheriffs' Fees ...	112
"	XI.	Titles to Rent-free Estates, Bombay ...	114
"	XXX.	Indian Naturalization ...	124
1853	II.	Landholders' Public Charges and duties ...	129
"	VI.	Rent Recovery ...	131
"	XI.	Shore-nuisances (Bombay and Kolaba) ...	133
"	XIX.	Evidence Bengal ...	135
"	XX.	Legal Practitioners ...	137
1854	XVI.	Police, N.-W. P. ...	138
"	XXIV.	War-knives in Malabar ...	139
"	XXXI.	Conveyance of Land ...	140
1855	X.	Witnesses, Madras and Bombay ...	144
"	XI.	Mesne Profits and Improvements ...	145
"	XII.	Legal Representatives' Suits ...	146
"	XIII.	Fatal Accidents ...	148
"	XXI.	Court of Wards, Madras ...	150
"	XXIII.	Mortgaged Estates Administration ...	153
1855	XXIV.	Penal Servitude... ...	154
"	XXVIII.	Usury-laws Repeal† ...	157
"	XXXVII.	Sonthal Parganas* ...	159
1856	IX.	Indian Bills of Lading ...	163
"	XI.	European Deserters ...	164
"	XII.	Civil Court Amins, Bengal ...	167
"	XV.	Hindu Widows Re-marriage ...	169
"	XVIII.	Calcutta Land Revenue* ...	173
"	XX.	Bengal Chaukidari* ...	173
1857	II.	Calcutta University ...	190
"	IV.	Tobacco, Bombay ...	194
"	V.	Oriental Gas Company ...	199
"	VII.	Uncovenanted Officers, Madras ...	207
"	X.	Sonthal Parganas* ...	208
"	XI.	State Offences ...	206
"	XIII.	Opium* ...	210
1857	XXI.	Howrah Offences* ...	219
"	XXII.	Bombay University ...	228

* This title has been given by the Repealing and Amending Act, I, of 1903.

† This title has been given by the Indian Short Titles Act, XIV, of 1897.

TABLE OF CONTENTS.

C

Year.	No.	Subject-matter.	Page.
"	XXV.	Forfeitures	232
"	XXVII.	Madras University	235
"	XXIX.	Land Customs, Bombay	239
1858	I.	Compulsory Labour, Madras	244
"	III.	State Prisoners	247
"	XXXI.	Bengal Alluvial Land Settlement*	249
1859	V.	Bengal Ghatwali Lands*	250
"	IX.	Forfeiture	252
"	X.	Bengal Rent*	254
"	XI.	Bengal Land-revenue Sales*	295
"	XII.	Calcutta Pilots*... ..	329
"	XIII.	Workman's Breach of Contract	337
"	XX.	Mappillas, Malabar	344
"	XXIV.	Police, Madras	348
1860	IX.	Employers and Workmen (disputes)	358
"	XXI.	Societies Registration	360
"	XXXIV.	Government Officers' Indemnity	366
"	XLV.	Penal Code	367
1861	V.	Police	531
"	XVI.	State-carriages	555
1862	III.	Government Seal	562
1863	XVI.	Excise (Spirits)... ..	563
"	XX.	Religious Endowments	566
"	XXIII.	Waste-lands, Claims	579
"	XXXI.	Official Gazettes	587
1864	II.	Aden	588
"	III.	Foreigners	595
"	XV.	Tolls	603
"	XVII.	Official Trustees	605
1865	III.	Common Carriers	505
"	X.	Intestate and Testamentary Succession... ..	609
"	XV.	Parsi Marriages and Divorces	721
1867	XXI.	Parsi Intestate Succession	736
1866	XXI.	Dissolution of Native Converts' Mar- riages	740
"	XXIII.	Correcting Bombay High Court Letters Patent	750
"	XXV.	Unclaimed Deposits	750
"	XXVI.	Subordinate Proprietors, Oudh	752
"	XXVII.	Conveyance of Property in Mortgagees and Trustees	755
"	XXVIII.	Powers of Mortgagees and Trustees	776
"	I.	Ganges Tolls	793

* This title has been given by the Repealing and Amending Act I. of 1908.

Year.	No.	Subject-matter.	Page.
1867	III.	Public Gambling	798
"	XVI.	Acting Judges	808
"	XIX.	Darjeeling (High Courts Jurisdiction)*...	809
"	XXII.	Sarais and Puraos	810
"	XXIII.	Panjab Murderous Outrages*	816
"	XXV.	Press and Registration of Books	820
"	XXXII.	Chief Commissioners' Powers	831
1868	V.	Commissioner in Sindh	832
"	XXIV.	Inoculation, Kumaon and Garhwal	833
1869	I.	Taluqdars, Oudh	834
"	IV.	Divorce	853
"	XIII.	Procedure of High Court, N.-W. P.	887
"	XIV.	Civil Courts, Bombay	889
1870	V.	Unclaimed Deposits	900
"	VII.	Court-fees	901
"	VIII.	Femal Infanticide Prevention	972
"	XXI.	Wills of Hindues, &c.	975
"	XXIV.	Relief of Oudh Taluqdars	977
"	XXVII.	Amending Penal Code	985
1871	I.	Cattle-trespass	987
"	IV.	Coroners	998
"	V.	The Prisoners Act	1007
"	XXI.	Dehra Dun	1008
"	XXII.	Bengal Chaukidari (Amendment)*	1009
"	XXIII.	Pensions	1010
"	XXXI.	Weights and Measures	1019
1872	I.	Evidence	1023
"	III.	Special Marriage	1085
"	IV.	Panjab Laws	1093
"	V.	Sindh	1106
"	IX.	Contract	1107
1872	XV.	Christian Marriage	1188
"	XVIII.	Amending Indian Evidence	1221
"	XIX.	Penal Code Amendment	1222
"	XX.	Amending Act V. of 1872	1223
1873	III.	Civil Courts, Madras	1224
"	V.	Savings Banks	1233
"	VIII.	Canals and Drainage, Northern India	1237
"	X.	Oaths	1264
"	XVI.	Village and Road Police, N.-W. P.	1270
"	III.	Married Women's Property	1274
"	IV.	Foreign Recruiting	1279
"	IX.	European Vagrancy	1281
"	XII.	Sylhet	1295
"	XIV.	Scheduled Districts	1296
"	XV.	Laws Local Extent	1307

*Chronological Table of the Unrepealed Acts of the
Governor-General in Council.*

1834—1874.

Year.	No.	Subject or Short Title.	Repeals, amendments, and references.
1834	II	Secretaries to Govern- ment.	Short title given by Act 14 of 1897. Rep. in pt. by Act 10 of 1914, S3, Sch. II.
1835	XIX	Assistant to Agent for Sirdars in Dekkhan.	S. 1 rep. in pt. and s. 2 added by Act 12 of 1891.
1836	X	The Bengal Indigo Contracts Act, 1836.	Short title given by Act XI of 1903. S. 5 rep. by Act 8 of 1868. S. 1 rep. by Act 14 of 1870. Formal words in ss. 2, 3, 4 rep. by Act 16 of 1874.
"	XX	Batwaras ...	Rep. (in Bengal) by Ben. Act 8 of 1876 Rep. (in Assam) by Reg. 1 of 1886.
"	XXI	The Bengal Districts Act, 1836.	Short title given by Act 1 of 1903. Supplemented, by Ben. Act 4 of 1864. Formal words rep. by Act 16 of 1874. Am. and rep. in pt. by Act 1 of 1903. Rep. (in Assam) by Reg. 1 of 1886. Rep. (in Punjab) by Act 17 of 1887. Rep. (in U. P.) by Act 1 of 1903.
1837	IV	The property in Land Act, 1837.	Short title given by Act 14 of 1897.
"	XXXVI	The Madras Public Property Malversa- tion Act.	Short title given by Act 11 of 1901.
1838	XVI	Suits, Bombay ...	S. 1 (3) rep. by Bom. Act 2 of 1866. S. 1 (1), 5 rep. in pt. by Act 14 of 1870. S. 6 and formal words in ss. 2 to 5 rep. by Act of 16 of 1874. Rep. in part by Act 10 of 1876. Rep. in part by Bom. Act 3 of 1876.
1838	XIX	Coasting Vessels Bom- bay.	Rep. in pt. by Act 14 of 1879. " by Act 16 of 1874. " by Act 12 of 1876.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
1838	XXV	The Wills Act, 1838 ...	Short title given by Act 14 of 1897. Rep. (except as to wills made before 1st January, 1866), by Act 8 of 1868 Rep. in part by Act 10 of 1914. " Act 12 of 1891.
1839	VII	The Madras Rent and Revenue Sales Act, 1839.	Short title given by Act 11 of 1901. Rep in part by Act 14 of 1870 " by Act 12 of 1891. " by Act 12 of 1891.
1839	XX	Lvey of Haqqs etc Bombay.	Rep in pt. by Act 16 of 1874. Amended by Act 4 of 1894.
"	XXIV	The Ganjam and Viza- gapatam Act, 1839.	Short title given by Act 11 of 1901. Rep. in pt. by Act 14 of 1870. " Act 16 of 1874. " Act 12 of 1891 " Mad Act 1 of 1865.
1839	XXIX	The Dower Act, 1839	Short title given by Act 14 of 1897. Rep. in pt. by Act 8 of 1868. " Act 12 of 1891. " Act 10 of 1914.
1839	XXX	The Inheritance Act, 1839.	Short title given by Act 14 of 1897. Rep. in pt. by Act 8 of 1868. " by Act 12 of 1891. " by Act 10 of 1914. Supplemented by Act 28 of 1866.
1839	XXXII	The interest Act...	Short title given by Act 14 of 1897.
1840	VIII	The Madras Pan- chayat Act, 1840...	Short title given by Act 11 of 1901.
1840	XV	Agents of Foreign Sovereigns, etc, Bombay.	Rep. in pt. Act 16 of 1874.
1841	X	The Indian Registra- tion of ships Act, 1841.	Short title given, by Act 14 of 1897. Rep. in pt. by Act 16 of 1874. " by Act 2 of 1850. Rep. and Am. by Act 7 of 1891. Am. by Act 5 of 1883. Rep. in part by Act 10 of 1914.
1841	XII	The Bengal Land Re- venue Sales Act, 1841,	Short title given by Act 1 of 1903. Rep. in pt. by Act 1 of 1845. " by Act 14 of 1870. " by Act 16 of 1874. Rep. (in Agra) by Act 9 of 1873. Rep. (in Central Provinces) by Act 18 of 1881. Rep. (in Assam) by Reg. 1 of 1866.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
1841	XIX	The Succession (Property Protection) Act, 1841.	Short title given by Act 14 of 1897. Rep. in pt. by Act 8 of 1855. " by Act 16 of 1874. " by Act 12 of 1876.
1841	XXIV	The Illusory Appointments and Infant's property Act, 1841.	Short title given by Act 14 of 1897. Rep. in pt. by Act 27 of 1866. " by Act 8 of 1868. " by Act 16 of 1874. " by Act 12 of 1891.
1842	XIII	Revenue, Bombay ...	Rep. in pt. by Act 16 of 1874.
1842	XVII	Revenue Commissioners slavery Act, 1843.	Rep. in pt. by Act 14 of 1870. Residue rep. (locally) by Bom. Act 5 of 1879.
1843	V	The Indian Slavery Act.	Short title given by Act 14 of 1897. Rep. in pt. by Act 16 of 1874.
1844	VI	The Madras Inland customs Act, 1844.	Short title given by Act 11 of 1901. Ref. in pt. by Act 6 of 1863. " by Act of 8 of 1868. " by Act 11 of 1869. " by Act 24 of 1869. " by Act 13 of 1871. " by Act 16 of 1874. " by Act 13 of 1877. " by Act 12 of 1891. Amended by Mad Act 2 of 1903
1844	XIX	Abolition of Town duties, etc., of Bombay.	
1845	I	Sales of land for Revenue arrears	Rep. (in Bengal) by Act 11 of 1859 " (in Punjab) by Act 12 of 1873 " (in Agra) except certain areas by Act 19 of 1873
1846	1	The Legal Practitioners Act, 1846	Short title given by Act 14 of 1897 Rep. in pt. by Act 16 of 1874. " by Act 12 of 1876. Rep. in pt. and am. by Act 12 of 1891. Am. by Act 20 of 1853, s. 4. Rep. (locally) by Act 20 of 1865. " by 18 of 1879. Rep. (in Burma) by Act 13 of 1878.
1847	IX	The Bengal Alluvion and Dilluvion Act, 1847	Short title given by Act of 1903. Supplemented and Rep. by by Ben. Act 4 of 1868. Rep. in part by Act 1 of 1870. " by Act 16 of 1874. " by Act 1 of 1891. " by Act 1 of 1903. Rep. (in Assam) by Reg. 1 of 1886.

Year.	No.	Subject or Short Title	Repeals, amendments and references.
1848	XX	The Bengal Land-holders Attendance Act 1848	Short title given by Act 1 of 1903. Rep. (in Assam) by Act 1 of 1886.
1849	X	The Madras Revenue Commissioners Act, 1849	Short title given by Act 11 of 1901.
1850	V	The Indian Coasting Act,	Short title given by Act 14 of 1897.
1850	XI	The Indian Registration of Ships Act (1841) Amendment Act, 1850	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1870.
1850	XII	The Public Accountants Defaults Act 1850	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1870. Rep. in pt. (locally in Bombay) by Bom. Act 15 of 1879. Rep. in (assam) Reg. 1 of 1886.
1850	XVIII	The Judicial officers Protection Act, 1850.	Short title given by Act 14 of 1897.
1850	XIX	The Apprentices Act	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1870. " by Act 16 of 1874. Bm. by Act 12 of 1891.
1850	XXI	The Caste Disabilities Removal Act, 1850.	Short title given by Act 14 of 1897.
1850	XXIII	The Calcutta Land Revenue Act.	Short title given by Act 1 of 1903. Rep. in pt. and Am. by Act 15 of 1882.
1850	XXV	The Forfeited Deposits Act 1850.	Short title given by Act 5 of 1897. Rep. in pt. by Act 14 of 1870. " by Act 12 of 1891.
1850	XXVI	Improvements in Towns	Rep. in pt. by Act 14 of 1870. Rep. (in Agra) by Act 6 of 1868. Rep. (in Punjab) by Act 4 of 1878. Rep. (in Bombay) by Act 6 of 1874. Rep. (in Bengal & Assam) by Act 5 of 1876. Rep. (in Sindh) by Bom. Act 1 of 1879. Rep. in (locally in Madras) by Mad Act 10 of 1865.
1850	XXXIV	The State Prisoners Act.	Short title given by Act 14 of 1897. Rep. in pt. 12 of 1891. Supplemented by Act 3 of 1858.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
„	XXXVII	The Public Servants (Inquiries) Act, 1850.	Short title given by Act 1 of 1897. Rep. in pt. by Act 14 of 1870. „ Act 16 of 1870. „ Act 12 of 1876. „ (locally) by Act 16 of 1868. Am. by Act 1 of 1897. Am. by Act 10 of 1914.
1851	VIII	The Indian Tolls Act, 1851.	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1870. „ Act 12 of 1876. „ Act 2 of 1901. Rep. in pt. and Supplemented by Act 8 of 1888. Am. (locally) by Act 15 of 1864. Supplemented by Act 8 of 1892. Rep. (in Bombay) by Bom. Act 3 of 1875. Am. by Act 38 of 1920.
„	XII	The Madras City Land Revenue Act, 1851.	Short title given by Act 11 of 1901. Rep. in pt. by Mad. Act 6 of 1867. Bom. by Act 12 of 1891.
1852	VIII	The Sheriff's Fees Act, 1852.	Short title given by Act 14 of 1897.
„	XI	Titles to Rent free Estates. Bombay.	Rep. in pt. by Act 16 of 1874. „ by Act 10 of 1876. „ by Act 4 of 1894.
„	XXX	The Indian Naturalisation Act, 1852.	Short title given by Act 14 of 1897. Rep. in pt. by Act 16 of 1874. „ Act 12 of 1876. „ Act 16 of 1914. Rep. and Am. by Act 16 of 1919.
1853	II	The Land holders Public Charges and Duties Act, 1853.	Short title given by Act 14 of 1897
1853	VI	The Rent Recovery Act 1853.	Short title given by Act 5 of 1897. Rep. in pt. by Bom. Act 8 of 1865. „ by Act 12 of 1873. „ by Act 12 of 1891.
1853	XI	Shore Nuisance (Bombay and Kalaba.)	Rep. in pt. by Act 22 of 1855. „ by Act 14 of 1870
1853	XIX	The Recusant witnesses Act, 1853.	Short title given by Act 5 of 1897. Rep. in part by Act 10 of 1855. „ „ by Act 10 of 1861. „ „ by Act 1 of 1872. „ „ by Act 12 of 1891.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
			Rep. (except in Assam) by Act 1 of 1903.
1853	XX	The Legal Practitioners Act, 1853.	Short title given by Act 5 of 1897. Rep in pt by Act 14 of 1870. Rep (locally) by Act 20 of 1865. " by Act 9 of 1864 Rep. (in Burma) by Act 13 of 1898.
1854	XVI	Police, Agra.	Rep. in pt. by Act 14 of 1870
1854	XXIV	The Malabar War knives Act 1854.	Short title given by Act 11 of 1901. Rep. in pt. by Act 14 of 1870.
1854	XX XI	The conveyance of Land Act, 1854.	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1870. " by Act 16 of 1874. " by Act 12 of 1876. (Locally) by Act 4 of 1882
1855	XI	The Mesne Profits and Improvements Act, 1855.	Short title given by Act 14 of 1897. Rep. in pt. (locally) by Act 4 of 1882.
1855	XII	The Legal Representatives Suit's Act, 1855.	Short title given by Act 14 of 1897. Rep. in pt. by Act 9 of 1871.
1855	XIII	The Indian Fatal Accidents Act, 1855.	Short title given by Act 14 of 1897 Rep. in pt. by Act 9 of 1871. " " by Act 10 of 1914.
1855	XXIII	The Mortgaged Estates Administration Act, 1855.	Short title given by Act 14 of 1897. Rep. in pt. by Act 16 of 1874. Rep. (except as to descents etc. made before 1st January 1866). by Act 8 of 1868.
1855	XXIV	The Penal Servitude Act, 1855.	Short title given by Act 14 of 1897. Rep. in pt. by Act 12 of 1867. " by Act 14 of 1870. " by Act 5 of 1871. " by Act 16 of 1874. " by Act 12 of 1876. " by Act 10 of 1914.
1855	XXVIII	The Usury Laws Repeal Act, 1855.	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1870.
1855	XXXII	The Bengal Embankment, Act, 1855.	Short title given by Act 1 of 1903. Rep. in pt. by Act 14 of 1870. " by Act 16 of 1874. " by Act 21 of 1903. " by Act 5 of 1897. " (in Am.) by Act 4 of 1915.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
1855	XXXVII	The Sonthal Parganas Act 1855.	Short title given by Act 1 of 1903, Am. by Act 10 of 1857, Rep. in pt. by Act 14 of 1870. " by Act 12 of 1891 " by Reg 5 of 1893. Suppld. by 14 of 1874.
1855	IX	The Indian Bills of lading Act 1856.	Short title given by Act 14 of 1897.
1855	XI	The European Deserters Act.	Short title given by Act 14 of 1897; Rep. in pt. by Act 14 of 1879; " by Act 12 of 1873. " by Act 16 of 1874.
1856	XV	The Hindn Widows' Remarriage Act 1856	Short title given by Act 14 of 1897.
1856	XVIII	The Calcutta Land Revenue Act, 1856	Short title given by Act 1 of 1903. Rep. in pt. by Act 18 of 1869. " by Act 12 of 1891.
1856	XX	The Bengal Chaukdari Act 1856.	Short title given by Act 1 of 1903. Rep. in pt. by Act 14 of 1870. " by Act 10 of 1872. " by Act 22 of 1871. " by Act 12 of 1891. " by Ben. Act 5 of 1876. " by U. P. Act 1 of 1914. " by Act 20 of 1883. " by Reg. 5 of 1886. " by Act 13 of 1889.
1857	II	The Calcutta University Act 1857.	Short title given by Act 14 of 1897. Rep. in pt. by Act 12 of 1876. " by Act 12 of 1891. Amend by Act 7 of 1921.
1857	IV	Tobacco (Bombay) Town.	Rep. in pt. by Act 14 of 1870. " by Act 16 of 1874. " by Act 12 of 1876. " by Act 12 of 1891.
1857	V	Oriental Gas Company.	Am. by Act 11 of 1867. Short title given by Act 11 of 1910.
1857	VII	The Madras Uncovenanted officer's Act.	Rep. in pt. by Act 17 of 1862. " by Act 10 of 1873. " by Act 12 of 1873. " by Mad Act 7 of 1914.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
1857	X	The Sonthal Parganas Act, 1857.	Short title given by Act 1 of 1904. Rep. in pt. by 14 of 1870. Rep. in pt. by 14 of 1874.
1857	XI	The State offences Act, 1857.	Short title given by Act 14 of 1847. Rep. in pt. by Act 17 of 1862. " by Act 12 of 1876.
1857	XIII	The opium Act, 1857.	Short title given by Act 1 of 1903. Rep. in pt. by Act 14 of 1870. " " by Act 1 of 1878. " " by Act 12 of 1891. Am. by Act 1 of 1911. Suppld by Act 1 of 1911. Rep. (in Assam) by Act 5 of 1897.
1857	XIX	Joint Stock Companies.	Rep. in pt. by Act 10 of 1866.
1857	XXI	The Howrah offences Act 1857.	Short title given by Act 1 of 1903. Rep. in pt. by Act 16 of 1874. " by Ben. Act 3 of 1884. " by Ben. Act 5 of 1876. " by Act 12 of 1891. " by Act 1 of 1903. Amended by Ben. Act 4 of 1913.
1857	XXII	The Bombay University Act 1857.	Short title given by Act 14 of 1897. Rep. in pt. by Act 12 of 1876. " by Act 12 of 1891. Suppld by Act 8 of 1904.
1857	XXV	The Forfeiture Act 1857.	Short title given by Act 14 of 1897. Rep. in pt. by Act 5 of 1869. " by Act 9 of 1871. " by Act 12 of 1891. Suppl by Act 9 of 1859. Rep. by Act 4 of 1922.
1857	XXVII	The Madras University Act 1857.	Short title given by Act 14 of 1897 and Act 11 of 1901 Rep. in pt. by Act 12 of 1891. " by Act 12 of 1891. Suppl by Act 8 of 1904.
1857	XXIX	Land customs Bombay.	Rep. in pt. by Act 11 of 1866. " by Act 14 of 1870. " by Act 13 of 1871. " by Act 16 of 1874. " by Act 12 of 1876. Amend by Act 38 of 1920. Am. by Bom. Act 3 of 1915.

Year.	No.	Subject or short title.	Repeals, amendments and references.
1858	I	The Madras Compulsory Labour Act, 1858.	Short title given by Act 11 of 1901. Rep. in pt. by Act 16 of 1874.
	III	The State Prisoners Act, 1858.	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1876. " by Act 12 of 1891.
1858	XXXI	The Bengal Alluvial Land Settlement Act.	Short title given by Act 1 of 1903. Rep. in pt. by Act 1 of 1903.
1859	V	The Bengal Ghatwali Lands Act, 1859.	Short title given by Act 1 of 1903.
	IX	The Forfeiture Act.	Short title given by Act 14 of 1897. Rep. in pt. by 8 of 1868. " by Act 12 of 1891.
	X	The Bengal Rent Act.	Short title given by Act 1 of 1903. Rep. in pt. by Act 36 of 1860. " " by Ben. Act 6 of 1862. " " by Act 20 of 1865. " " by Act 7 of 1870. " " by Act 14 of 1870. " " by Act 12 of 1891. Amend by Act 1 of 1903.
	XI	The Land Revenue Sales Act, 1859.	Short title given by Act 1 of 1903. Suppl. by Ben. Act 3 of 1862. " Act 7 of 1868. Rep. in pt. by Act 14 of 1870. " by Ben. Act 3 of 1881. " by Act 12 of 1891, Suppl. by Ben. Act 1 of 1895. " by Ben. Act 3 of 1913. Rep. in pt. by Act 1 of 1903. " by Act 4 of 1914. Rep. in (Assam) by Reg. 1 of 1886.
1859	XII	The Calcutta Pilots.	Short title given by Act 1 of 1903. Rep. in pt. by Act 14 of 1870. " by Act 10 of 1873. " by Act 4 of 1914. Am. by Act 6 of 1883. " Act 1 of 1903.
1859	XIII	The Workman's Breach of contract Act, 1859.	Short title given by Act 14 of 1897. Rep. in pt. by Act 16 of 1874. Amend by Act 12 of 1920 and Act 38 of 1920.

Year.	No.	Subject or short title.	Repeals, amendments and references.
1859	XX	The Moplah outrages.	Short title given by Act 11 of 1903. Rep. in pt. by Act 14 of 1870, " by Mad. Act 7 of 1869.
1859	XXIV	The Madras District Police, Act, 1859.	Short title given by Act 11 of 1901. Rep. in pt. by Act 17 of 1862. " by Act 14 of 1870. " by Act 16 of 1874. " by Mad. Act 5 of 1896. Rep. in part and Am. by Mad. Act 3 of 1895. Rep. in pt. and Am. by Act 4 of 1914. Am. by Mad. Act 3 of 1909. Supp. by Act 3 of 1888. " by Mad. Act 3 of 1889. Rep. in pt. by Act 17 of 1914.
1860	IX	The Employers and work-men (Disputes) Act, 1860.	Short title given by Act 14 of 1897. Rep. in pt. by Act 9 of 1871. Am. by Act 38 of 1920.
1860	XXI	The Societies Registration Act, 1860	Short title given by Act 14 of 1897 Rep. in pt. by Act 16 of 1874. Am. by Bom. Act 2 of 1912.
1860	XXXIV	The Government officer's Indemnity Act, 1860.	Short title given by Act 14 1897.
1860	XLV	The Indian Penal Code.	Rep. in pt by Act 14 of 1870. " by Act 10 of 1882. " by Act 13 of 1889. " by Reg. 5 of 1872. Rep. in pt. and Am. by Act 8 of 1882. " by 12 of 1891. Am. by Act 27 of 1870. " Act 19 of 1872, " Act 10 of 1873. " Act 10 of 1886. " Act 14 of 1887. " Act 1 of 1889. " Act 4 of 1889. " Act 9 of 1890. Am. by 10 of 1891. " by 39 of 1920. " by Act 3 of 1894. " by Act 3 of 1895. " by Act 6 of 1896. " by Act 4 of 1898. " by Act 12 of 1899. " by Act 3 of 1910. " by Act 8 of 1913. " by Act 16 of 1921. Suppl. by Act 6 of 1864.

Year.	No.	Subject or short title.	Repeals, amendments and references.
1861	V	The Police Act.	Short title given by Act 14 of 1897. Rep. in pt. by Act 9 of 1871. " by Act 16 of 1874. " by Act 10 of 1882. " by Ben. Act 7 of 1869. " by Bur. Act 4 of 1899. " by Act 10 of 1914. " by Reg. 7 of 1901. Am. by Act 3 of 1888. " by Act 8 of 1895. " by Act 1 of 1903. " by Act 4 of 1914. " by Act 38 of 1920. Supp. by Ben. Act 7 of 1869.
1861	XVI.	The Stage-Carriage Act, 1861.	Short title given by Act 14 of 1897. Rep. in pt. by Act 14 of 1870. " by Act 10 of 1914. Rep. in pt. and Am. by 1 of 1898. Am. by Act 16 of 1876.
1862	III	The Government Seal Act, 1862.	Short title given by Act 14 of 1897.
1863	XVI	The Excise (Spirits) Act, 1863.	Short title given by Act 14 of 1897. Rep. in pt. by Act 12 of 1891. Rep. by Mad Act 1 of 1886. " " by Bom. Act 12 of 1912. " " by Ben. Act 5 of 1909. " " by U. P. Act 4 of 1910. " " by Punjab Act 1 of 1914. " " by C. P. Act 2 of 1915.
1863	XX	The Religions Endowment Act, 1863.	Short title given by Act 14 of 1897. Rep. in pt. by Act 7 of 1870. " by Act 14 of 1870. " by Act 16 of 1874. " by Act 20 of 1914. Am. by Act 12 of 1891.
1863	XXIII	The Waste Lands (claims) Act, 1863.	Short title given by Act 14 of 1897. Rep. in pt. by 9 of 1871. " by 10 of 1914. Am. by Act 4 of 1914.
1863	XXXI	The official Gazettee Act, 1863.	Short title given by Act 14 of 1897.
1864	II	Civil and Criminal Justice, Aden.	Rep. in pt. by Act 16 of 1891. Amend by Act V of 1913.
1864	III	The Foreigners, Act, 1864.	Short title given by Act 14 of 1897. Rep. in pt. by Act. 12 of 1876. " " pt. by Act 10 of 1914. " " pt. by Act 3 of 1915.

Year.	No	Subject or short title.	Repeals, amendments and references.
1864	VI	The whipping Act, 1864.	Short title given by Act 14 of 1897. Rep. in pt. by Act 10 of 1872. " " by Act 16 of 1874. " " by Act 10 of 1882. " " by Act 5 of 1900. " " by Act 4 of 1909 Am. by Act 3 of 1895,
1864	XV	The Indian Tolls Act 1864.	Short title given by Act 14 of 1897. Amend by Act 38 of 1920. Supplemented by Act 8 of 1888.
1865	III	The Indian Carriers Act.	Rep in pt by Act 9 of 1890 Rep. in pt. by Act 10 of 1914. Rep. in pt. by Act 4 of 1879. Amend by Act 10 of 1899 " " Act 3 of 1865.
1865	X	The Indian Succession Act, 1865.	Rep. in pt. by Act 24 of 1867. " " by Act 7 of 1876. " " by Act 15 of 1877. " " by Act 10 of 1914. " " by Act 6 of 1900. Rep. in pt. and Am. by Act 6 of 1889 " " Act 12 of 1891. Am. by Act 6 of 1881. " " 2 of 1890. " " 5 of 1902. " " Act 38 of 1920. " " Act 8 of 1903. " " Act 18 of 1919.
1865	XV	The Parsi Marriage and Divorce Act 1865.	Rep. in pt. by Act 7 of 1870. " " by Act 14 of 1870. " " by Act 12 of 1876. " " by Act 10 of 1914 Am by Act 6 of 1886. " " by Act 38 of 1920.
1865	XXI	The Parsi Intestate Succession Act, 1865.	Short title given by Act 14 of 1897.
1866	XXI	The Native Converts, Marriage Dissolution Act, 1866.	Rep. in pt. by Act 7 of 1870. " " by Act 16 of 1874. " " by Act 12 of 1891. " " by Act 10 of 1914,
1866	XXV	The Unclaimed Deposits Act, 1866.	Short title given by Act 14 of 1897. Rep. in pt. by Act 24 of 1867. " " by Act 16 of 1874. " " by Act 12 of 1876. " " by Act 12 of 1891. Suppl. by Act 5 of 1870.

Year.	No.	Subject or short title.	Repeals, amendments and references.
1866	XXVI	The Indian Trustees Act 1866.	Rep. in pt. by Act 14 of 1870. " by Act 16 of 1874. " by Act 10 of 1914. Rep. in pt. by Act 4 of 1882. Am. by Act 6 of 1900. Rep. in pt. by Act 18 of 1919.
1866	XXVIII	The Trustees' and Mortgagees' Powers Act, 1866.	Rep. in pt. by Act 16 of 1874. " " by Act 1 of 1882. " " by Act 2 of 1882. Am. by Act 6 of 1900 Rep. in pt. Act 18 of 1919.
1867	III	The Public Gambling Act, 1867.	Short title given by Act 5 of 1897. Amend by U. P. Act I of 1917. " " U. P. Act V of 1919. Rep by Act 16 of 1874. " by Act 17 of 1914. Rep by Bur. Act 1 of 1899. Am. by Act 1 of 1903.
1867	XVI	The Acting Judges Act, 1867.	Short title given by Act 14 of 1897.
1867	XIX	The Darjeeling (High courts' Jurisdiction) Act, 1867.	Short title given by Act 1 of 1903. Rep. in pt. by Act 16 of 1874.
1867	XXII	The Sarais Act, 1867.	Rep. in pt. by Act 12 of 1891. Rep. in pt. by Act 10 of 1891.
1867	XXIII	The Punjab Murderous Outrages Act, 1867.	Short title given by Act 1 of 1903. Rep. in pt. by Act 16 of 1874. Amend by Act 9 of 1877. Rep. in pt. by Act 12 of 1891.
1867	XXV	The Press and Registration of Books Act, 1867.	Short title given by Act 14 of 1897 Rep. in pt. by Act 14 of 1870. Rep. in pt. by 3 of 1914. Amend by Act 11 of 1915. " by Act 38 of 1920. Rep. in pt. and Amend by Act 10 of 1890. " by Act 12 of 1891. " by Act 10 of 1914.
1867	XXXII	The Chief Commissioner's powers Act.	Rep. in pt. by Act 1 of 1903. " and Am. by Act 10 of 1914.
1869	I	The Oudh Estates Act 1869.	Am. by Act 10 of 1885. " by Act 38 of 1920.

Year.	No.	Subject or short title.	Repeals, amendments and references.
1869	IV	The Indian divorce Act	Rep. in pt. by Act 7 of 1870. " " by Act 12 of 1873. " " by Act 18 of 1884 " " by Act 4 of 1901. Am. by Act 10 of 1912. " " Act 18 of 1919.
1869	XIV	The Bombay Civil Courts Act, 1869.	Rep. in pt. by Act 14 of 1870. " by Act 12 of 1876. " by Act 7 of 1889. " by Act 8 of 1890. " by Act 12 of 1891. Am. by Act 10 of 1876. Am. by Act 9 of 1880. " Act 15 of 1880. " Bom. Act 3 of 1895. " Bom. Act 1 of 1900. " Bom. Act 1 of 1910. " Bom. Act 5 of 1912. " Bom. Act 5 of 1914.
1870	V	The Unclaimed Deposits Act, 1870.	Short title given by Act 14 of 1897. Rep. in pt. by Act 2 of 1874. " by Act 16 of 1874.
1870	VII	The Court Fees Act 1870.	Rep. in pt. by 14 of 1870. " by Act 8 of 1871. " by Act 13 of 1889. " by Act 8 of 1890. " by Act 17 of 1887. Rep. in pt. am and by Act 20 of 1870. " by Act 6 of 1889. " by Act 12 of 1891. " by Act 5 of 1908. Am. by Act 15 of 1872. " Act 13 of 1875. " Act 7 of 1889. " Act 11 of 1899. " Act 10 of 1901. " Act 6 of 1905. " Act 7 of 1910. " Act 14 of 1911. " Act 17 of 1914. " Act 24 of 1917. " Act 18 of 1919. " by Act 38 of 1920. " by Ben. Act 5 of 1922. " by Punj Act 1 of 1912. " by Bur. Act 1 of 1910. " by Punj. Act 3 of 1914.
870	VIII	The female Infanticide prevention Act, 1870.	Short title given by Act 14 of 1897. Am. by Act 28 of 1920.

Year.	No.	Subject or short title.	Repeals, amendments and references.
1870	XX	The Court Fees Act (1870) Amendment Act 1870.	Short title given by Act 14 of 1897.
1870	XXI	The Hindu Wills Act 1870.	Rep. in pt by Act 12 of 1891. „ Am. by Act 5 of 1881.
1870	XXIV	The Oudh Taluqdars.	Am. by Act 12 of 1891.
1870	XXVII	The Indian Penal Code Amendment Act, 1870.	Short title given by Act 14 of 1897. Rep. in pt. by Act 10 of 1872. Rep. in pt. and Am. by Act 12 of 1891. „ by Act 4 of 1898. Rep. in pt. by Act 1 of 1903.
1871	I	The Calcutta Trespass Act.	Rep. in pt. by Act 10 of 1914. Amended by Act 17 of 1921.
	IV	The Coroners Act	Rep. in pt. by Act 9 of 1871. Rep. in pt by Act 10 of 1873. „ Act 12 of 1873. Rep. in pt. by Act 16 of 1874 „ by Act 10 of 1881 Am. by Act 5 of 1899 Rep. in pt. by 12 of 1891 Rep. by Act 4 of 1903
1871	V	The Prisoners Act, 1871	Rep. in pt by Act 3 of 1900
	XXIII	The Bengal chankidari (Amendment) Act	Short title given by Act 1 of 1903 Rep. in pt by Act 12 of 1891 „ by Act 18 of 1919
1871	XXIII	The Pensions Act	Rep. in pt. by Act 12 of 1891 „ by Act 10 of 1914 Am by Act 21 of 1886
1872	I	The Indian Evidence Act, 1872	Rep. in pt. by Act 10 of 1897 „ by Act 10 of 1897 Am by Act 10 of 1872 „ Act 3 of 1887 „ Act 3 of 1891 „ Act 5 of 1899 „ Act 18 of 1919 Rep. in pt. and Am by Act 10 of 1914.
1872	III	The Special marriage Act, 1872	Short title given by Act 14 of 1897 Rep. in pt. by Act 16 of 1874 „ by Act 12 of 1876 Am by Act 6 of 1886 „ by Act 38 of 1920.

Year.	No.	Subject or short title.	Repeals, amendments and references.
1872	IV	The Punjab Laws Act 1872	Rep in pt. by Act 1 of 1878 " by Act 6 of 1878 " by Act 10 of 1879 " by Act 4 of 1882. " by Act 10 of 1882. " by Act 17 of 1887 " by Act 8 of 1890 " by Pun. Act 2 of 1903 " by Pun. Act 2 of 1905 " by Act 3 of 1907 " by Pun Act 1 of 1910. " by Act 17 of 1914 " by Reg 7 of 1901. Amend by Act 15 of 1875. " by Act 24 of 1881. " by Pun Act 4 of 1900 Rep. in pt. and Am. by Act 12 of 1891 " by Act 12 of 1891 " by Act 7 of 1895
1872	V	Jurisdiction over Sindh.	Am. by Act 20 of 1872. " Act 12 of 1891.
1872	IX	The Indian Contract Act.	Rep. in pt. by Act 1 of 1877. " by Act 10 of 1914. Am. by Act 4 of 1886. " by Act 12 of 1891. " by Act 24 of 1917. Rep. in pt. and Am. by Act 6 of 1899. " by Act 24 of 1917.
1872	* XV	The Indian Christian Marriage Act, 1872.	Rep. in pt. by Act 16 of 1874. " by Act 12 of 1891. Am. by Act 6 of 1886. " by Act 2 of 1891. " by Act 1 of 1903. " by Act 13 of 1911. " by Act 10 of 1914. " by Act 38 of 1920.
1872	XVIII	The Indian Evidence Act, Amendment Act.	Rep. in pt. by Act 10 of 1873. " by Act 16 of 1874. " by Act 12 of 1876.
1872	XIX	The Indian Penal Code Amendment Act.	Short title given by Act 14 of 1897.
1872	XX	Jurisdiction over Sindh (amending Act 5 of 1872).	Am. by Act 12 of 1891.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
1873	I	The Madras Civil Courts Act, 1873.	Rep. in pt. by Act 12 of 1873. " by Act 9 of 1887. " by Act 12 of 1891. " by Act 7 of 1887. Am. by Act 19 of 1877. " by Act 21 of 1885. " by Act 4 of 1914 " by Mad Act 3 of 1916. " by Mad Act 6 of 1919.
1873	V	The Government Savings Bank Act, 1873.	Rep. in pt. by Act 12 of 1873. " by Act 16 of 1874. " by Act 12 of 1891. Am. by Act 13 of 1916. " by Act 17 of 1917.
1873	VIII	The Northern India Canal and Drainage Act, 1873.	Rep. in pt. by Act 12 of 1873. " by Act 16 of 1874. " by Act 16 of 1887. Am. by Act 12 of 1891 " Act 16 of 1899. " Act 31 of 1920.
1873	X	The Indian Oaths Act, 1873.	Rep. in pt. by Act 12 of 1873. " by Act 12 of 1876. " by Act 6 of 1900 Am. by Act 6 of 1900.
1873	XVI	The Agra Village and Road Police Act, 1873.	Rep. in pt. by Act 16 of 1874. " by Act 12 of 1876. " by Act 12 of 1891.
1874	III	The married Women's Property Act, 1874.	Rep. in pt. by Act 12 of 1876. " by Act 6 of 1888. " by Act 12 of 1891. Amend by Act 38 of 1920.
1874	IV	The Foreign Recruiting Act 1874	Rep. in pt. by 12 of 1876.
1874	IX	The European Vagrancy Act, 1874.	Rep. in pt. by Act 1 of 1879. " by Act 4 of 1914. " by Act 10 of 1914. Am. by Act 12 of 1891. " 38 of 1920.
1874	XIV	The Scheduled Districts Act, 1874	Rep. in pt. by Act 19 of 1879. " by Act 14 of 1881. " by Act 25 of 1881. " by Act 8 of 1883. " by Act 7 of 1886 " by Act 20 of 1890. " by Act 6 of 1902. " by Reg. 1 of 1900. Am. by Act 2 of 1893. " Act 8 of 1920. Rep. in pt. and Am. by Act 12 of 1891.

Year.	No.	Subject or Short Title.	Repeals, amendments and references.
1874	XV	The Laws Local Extent Act, 1874.	Rep. in pt. by Act 8 of 1875. " by Act 12 of 1886. " by Act 18 of 1877. " by Act 6 of 1878. " by Act 11 of 1871. " by Act 19 of 1879. " by Act 14 of 1881. " by Act 26 of 1881. " by Act 10 of 1882. " by Act 8 of 1883. " by Act 7 of 1885. " by Act 8 of 1887. " by Act 9 of 1887. " by Act 7 of 1889. " by Act 13 of 1889. " by Act 8 of 1890. " by Act 20 of 1890. " by Act 4 of 1890. " by Act 9 of 1894. " by Act 11 of 1901. " by Act 1 of 1903. " by Ben. Act 2 of 1813 " B & O. Act 1 of 1913 Rep. in pt. and Am by Act 14 of 1881. Act 12 of 1891.

THE UNREPEALED ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

ACT NO. 11. OF 1834.*

The Secretaries to Government Act, 1834.†

PASSED ON THE 20TH NOVEMBER, 1834.

BE it enacted that each of the Secretaries to the Government of India‡ shall be competent to perform all the duties and to exercise all the powers which by any Act of Parliament or any Regulation now in force are assigned to the Chief Secretary to the Government of Fort William in Bengal, and that each of the Secretaries to the Governments of Fort St. George and Bombay respectively shall be competent to perform all the duties, and to exercise all the powers, which by any Act of Parliament or any Regulation now in force are assigned to the Chief Secretaries to the Governments of Fort St. George and Bombay respectively.

NOTE.

Scope.—This Act corrects a misnomer in certain Acts of Parliament which describes the Secretaries of the several Indian Governments as Chief Secretaries which is not their official designation.

* See the East India Company Act 1793 (33 Geo. III., c. 52), s. 39, and the East India Company Act, 1813 (53 Geo. III., c. 155), s. 79.

Act II. of 1834 has been declared, under s. 3(a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Schedule Districts; The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India* 1881, Pt. I., p. 504.

† This title has been given by the Indian Short Titles Act (XIV. of 1897).

‡ Certain words repealed by the Repealing and Amending Act of 1914 (Act X. of 1914) have here been omitted.

ACT NO. XIX. OF 1835.*

Assistant to Agent for Sardars in Dekkhan.

PASSED ON THE 9TH NOVEMBER, 1835.

BE it enacted that it shall be competent for the Governor in Council of Bombay to appoint the Assistant Judge of the Zila Court of Puna to be Assistant to the Agent for Sardars in the Dekkhan;†

and it shall be competent to the Agent for Sardars to refer to his assistant original suits against Sardars for amounts not exceeding 5,000 rupees ;‡

and every decree of the assistant shall be open to an appeal to the Agent within (30) thirty days from the date of the decree ; and every decision of the Agent on such appeal shall be open to a special appeal§ to the Governor in Council, or to the Sadr Adalat, according as the rank of the Sardar may subject him to the jurisdiction of either authority, provided that such last mentioned appeal shall be brought within (90) ninety days after the date of the decree of the Agent.

NOTE.

Scope.—By this Act the Governor of Bombay may appoint the Assistant Judge of Poonah to be Assistant to the Agent for Sardars in the Dekkhan, and the Agent may refer to such Assistant original suits against Sardars up to Rs. 5,000. Assistants' decree to be open to appeal to Agent for 30 days. Agent's decree to be open to special appeal to the Governor or to the Sadr Adalat according to the Sardar's rank for 90 days.

2. § The provisions of the Code of Civil Procedure relating to Procedure in appeals to Governor of Bombay in Council. appeals to a High Court from decrees passed in appeal shall apply, so far as may be, to appeals to the Governor in Council under this Act.

* As to the application of the Code of Civil Procedure in cases of the nature defined in Act XIX. of 1835, and in Civil Courts, see the Code of Civil Procedure (Act XIV. of 1882), s. 7.

† As to the Agent, see Bom. Reg. XXIX. of 1827, s. 4, cl. first.

‡ Certain words, repealed by the Repealing and Amending Act (XII. of 1891), Sch. I, have here been omitted.

§ S. 2 has been added by the Repealing and Amending Act (XII. of 1891), Sch. II.

ACT NO. X. OF 1836.*

The Bengal Indigo Contracts Act, 1836.†

PASSED ON THE 11TH APRIL, 1836.

1. [*Repealed by the Repealing Act (XIV. of 1870).*]

2.‡ Whenever the right to indigo-plant may be contested,

Security to be given by and an order shall be passed under the provisions of clause ninth, section 3, Regulation VI., 1823, of the Bengal Code, for the delivery of indigo-plant to one of the parties claiming the same, such party shall not be allowed to cut or remove the indigo-plant until he shall have given sufficient security, to the satisfaction of the Court trying the case, to make good any claim that shall be ultimately established to such indigo-plant, whether arising from a prior right to the produce of the land, or from an arrear of rent due on account of the specific parcel of land from which the plant may have been produced.

3.‡ When a lawful contract shall have been made between a

Right of suit of person making advances for cultivation or delivery of indigo-plant when breach of contract is induced by third person.

a raiyat and another party, by which contract the raiyat shall have bound himself to cultivate indigo-plant for the other party, or to deliver indigo-plant to the other party, and when the other party shall have advanced money to the raiyat for the purpose of enabling the raiyat to fulfil such contract, then if any other per-

* Act X. of 1836 has been declared to apply to the whole of Bengal, except the Scheduled Districts by the Laws Local Extent Act (XV. of 1874) s. 6; and under s. 3 of the Scheduled Districts Act (XIV. of 1874) it has been declared in force in West Jalpaiguri, the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan.—See Notification No. 308, dated March 3, 1881, published in *Calcutta Gazette*, March 9, 1881, Pt. I A, p. 68, and *Gazette of India*, March 5, 1881, Pt. I., p. 74; and Notification No. 1394, dated Oct. 21, 1881, published in *Calcutta Gazette*, No. 2, 1881, Pt. I A., p. 189, and *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504; also in the District of Silhat. See Notification No. 1152, published in *Gazette of India*, 1879, Pt. I., p. 631, and in the *Assam Gazette* 1879, Pt. II., p. 599.

Act X. of 1836 has also been declared by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces, except the Scheduled Districts; and it has further been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the scheduled portion of the Mirzapur District and in Jansar Bawar. See Notification No. 618, dated May 30, 1879, published in *Gazette of India*, Pt. I., p. 383, and *N.-W. P. and Oudh Gazette*, 1879, p. 775. Also see Notification No. 634, dated May 30, 1879, published in *Gazette of India*, 1879, Pt. I., p. 382, and *N.-W. P. and Oudh Gazette*, 1879, p. 774.

The whole of Act X. of 1836 has been repealed as to Assam by the Repealing and Amending Act (XII. of 1891).

Declared in force throughout Bengal and the N.-W. Provinces, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), ss. 6, 7.

† This title has been substituted by the Repealing and Amending Act (I. of 1903) Sch. I.

‡ The first six words of ss. 2 and 3, repealed by the Repealing Act (XVI. of 1874), have here been omitted.

son, knowing that such contract exists, and that such advance has been made, shall prevail upon the raiyat to break such contract, the party who made the advance shall be entitled to proceed by civil action against the person who shall have so prevailed on the raiyat, as well as against the raiyat and to recover from him or them, jointly or severally, damages to the extent of the injury sustained, together with costs of suit:

Provided always that nothing in this section contained shall be construed to give a right of action against any person in consequence of any act which that person may have done for the purpose of procuring payment of a debt or performance of a lawful contract.

4.* The Court trying any suit instituted under the provisions of Regulation VI., 1823, of the Bengal Code, or under the provisions of this Act, shall be authorized to examine both the plaintiff and the defendant whenever the Court shall deem such examination necessary to the ends of justice; and if the award be in favour of the defendant, to assign to the defendant a sum which may be a compensation to him for the expense and loss of time occasioned by the proceeding.

5. [*Repealed by the Repealing Act (VIII. of 1868).*]

NOTE.

S. 3 gives to the person who has made advances to a raiyat for indigo, an action for damages against any other party who has prevailed on the raiyat to break his contract and against himself jointly and severally. The prevailing on the raiyat may have taken place by force, bribes, intimidation, threats, etc., or in any other manner.—*Mr. Hudson v. Mr. Mascaren*, has 3 S. D. A. R. 190. As regards amount of damages, *vide* 8 W. R. 257 and 5 W. R. 277.

ACT NO. XX. OF 1836.

Batwaras.†

1. It is hereby enacted, that from the 1st day of October 1836, so much of clause 3, section 3, Regulation XI. 1822, section 3, Part clause 3, repealed. as provides "that joint estates shall not be liable to sale for arrears that may accrue during the progress of a butwara or partition, until the expiration of the year within which the arrear may become due"—be repealed.

* The first six words of s. 4, repealed by the Repealing and Amending Act (XVI. of 1874), s. 1, have here been omitted.

† Rep. (in Bengal) Ben. Act VIII. of 1876.

Rep. (locally in Assam) by Reg. I. of 1885.

2. And it is hereby enacted, that from the said first day of October, 1836, no butwara, while in progress shall be quashed only as hereinafter provided. Revenue, or by any officer invested with the powers of the said Board ; except as hereinafter provided.

3. And it is hereby enacted, that it shall be lawful for the said Board, or for any of the said officers, to give six months' notice in writing of an intention to quash any butwara ; and such notice shall be affixed at the offices of the Collector of the District and Munsiff of the jurisdiction, within which the lands under partition, or part of those lands, may be situated, and if within six months after such notice, no party to the said butwara shall deliver to the said Collector a written declaration, that he, the said party, objects to the quashing of the said butwara, it shall be lawful for the said Board or the said officer to quash the said butwara.

4. And it is hereby enacted, that every butwara which, before Acts done before 1st the said first day of October, 1836, may October 1836 legalized have been quashed by the said Board, or by any of the said officers, shall be taken by all Courts to have been lawfully quashed.

ACT NO. XXI. OF 1836.*

The Bengal Districts Act, 1836†.

PASSED ON THE 19TH SEPTEMBER, 1836.

It shall be lawful for the Governor-General in Council, by an order in Council, to create new zilas in any part of the Presidency of Fort William in Bengal, and to alter the limits of existing zilas.

NOTE.

The words "the Governor-General in Council by an Order in Council" shall be read as if the words "the Local Government, with the previous sanction of the Governor-General in Council, by notification in the Local Official Gazette" were substituted therefor.—*Vide* the Repealing and Amending Act (1. of 1903).

* Act XXI. of 1836 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Regulation III. of 1872, s. 3, as amended by Regulation III. of 1886, s. 2, in the Santhal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874) in West Jalpaiguri, Western Duars, the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum, and the Kolhan. See Notification No. 308, dated March 3, 1881, published in *Calcutta Gazette*, March 9, 1881, Pt. I A., p. 68, and in *Gazette of India*, March 5, 1881, Pt. I., p. 74; also see Notification No. 1394, dated October 21, 1881, published in *Calcutta Gazette*, November 2, 1881, Pt. I A., p. 189, and *Gazette of India*, October 22, 1881, Pt. I., p. 504.

ACT NO. IV. OF 1837.†

The Property in Land Act, 1837.

PASSED ON THE 17TH APRIL, 1837.

1. IT shall be lawful for any subject of His Majesty to acquire All subjects of Crown and hold in perpetuity, or for any term of empowered to hold land. years, property in land, or in any emoluments issuing out of land, in any part of the territories of the East India Company.§

2. All rules which prescribe the manner in which such pro- Rules applied to holdings perty as is aforesaid may now be acquired under Act. and held by natives of the said territories shall extend to all persons who shall, under the authority of this Act, acquire or hold such property ||

The Act has also been declared, by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces except as regards the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the scheduled portion of the Mirzapur District, and in Jaunsar Bawar.—See Notification No. 634, dated May 30, 1879 published in *Gazette of India*, 1879, Pt. I., p. 382, and *N.-W. P. and Oudh Gazette*, 1879, p. 774.

Certain words and figures in the Act, repealed by the Repealing Act (XVI. of 1874), s. 1, have been omitted.

Declared in force—

throughout Bengal and the N.-W. Provinces except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), ss. 6, 7 ;

in the Santhal Parganas by Regulation III. of 1872, s. 3, as amended by Regulation III. of 1899, s. 3.

Repealed (locally in Assam) by Regulation I. of 1886.

Repealed (in Punjab) by the Punjab Land Revenue Act (XVII. of 1887).

This title has been given by the Indian Short Titles Act (XIV. of 1897).

† This Title has been substituted by the Repealing and Amending Act (I. of 1903) Sch. I.

‡ Declared in force—

throughout British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3 ;

in the Santhal Parganas by Regulation III. of 1872, s. 3, as amended by Regulation III. of 1899, s. 3 ;

in the Arakan Hill District by Regulation IX. of 1874, s. 3

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
West Jalpaiguri	Ditto ...	1881, Pt. I., p. 74.
The District of Hazaribagh ...	Ditto ...	1881, Pt. I., p. 507.
Ditto Lohardaga ...	Ditto ...	1881, Pt. I., p. 508.
Ditto Manbhum ...	Ditto ...	1881, Pt. I., p. 509.
Pargana Dhalbhum in the Dis-		
trict of Singhbhum ...	Ditto ...	1881, Pt. I., p. 510.
The scheduled portion of the		
Mirzapur District	Ditto ...	1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ...	1879, Pt. I., p. 382.

ACT NO. XX. OF 1837.

Immoveable Property Strait Settlements.

1. IT is hereby enacted, that from the first day of October, 1837, all immoveable property situate within the jurisdiction of the Court of Judicature of Prince of Wales' Island, Singapore and Malacca, shall, as far as regards the transmission of such property on the death and intestacy of any person having a beneficial interest in the same, or by the last will of any such person, be taken to be and to have been of the nature of chattels real and not of freehold.

2. Provided always, that in any suit at law or in equity which shall be brought for the recovery of such immoveable property as is aforesaid, no advantage shall be taken of any defect of title, arising out of the transmission of such property upon the death and intestacy of any person having a beneficial interest in the same or by the last will of any such person, if such transmission took place before the said first day of October, and if such transmission were according to the rules which regulate the transmission of freehold property, or were according to the law of the nation to which the deceased person belonged, or took place with the acquiescence of all those to whom any interest in that property would, according to the rules which regulate the transmission of chattels real, have accrued upon the death of that person.

3. Provided also, that in all cases where immoveable property derived from a deceased person shall have been, before the said first day of October, conveyed for a valuable consideration by any person who would be entitled to convey the same according to the rules which regulate the transmission of freehold property, or according to the law of the nation to which the deceased person belonged, the person who so conveyed shall be entitled to retain to his own use the consideration received for such conveyance.

The Districts of Hazara,
Peshawar, Kohat, Bannu, Dera
Ismail Khan, and Dera Ghazi

Khan	See <i>Gazette of India</i> ...	1886, Pt. I. p. 48.
The District of Lahaul	Ditto ...	1886, Pt. I. p. 301.
The District of Silhat	Ditto ...	1879, Pt. I. p. 621.

It has been extended, under the same Act, to the Scheduled Districts of Kumaon, and Garhwal. See *Gazette of India*, 1876, Pt. I., p. 606.

§ For the old law, see Ben. Reg. II. of 1793, ss. 17, 46.

| See also Act II. of 1853 and 4 B. L. R., F. B., 161.

ACT NO. XXXVI. OF 1837.*

The Madras Public Property Malversation Act, 1837.†

PASSED ON THE 20TH NOVEMBER, 1837.

1.‡ THE jurisdiction vested in Collectors, Subordinate Col-

Extension of jurisdiction of Collectors and their subordinates in cases of embezzlement, &c., to similar offences by persons of certain classes.

lectors, and Assistant Collectors, by Regulations IX. of 1822 and VII. of 1828 of the Madras Code, in cases of embezzlement of public money, and of the falsification, destruction, or concealment of any public ac-

count, record, voucher, or document relating to public money, shall extend to cases of the embezzlement of any public property, or the falsification, destruction, or concealment of any public account, record, voucher, or document, relating to any public property, by any person of any of the classes described in the third clause of section 2 of the said Regulation IX. of 1822.

2. All provisions of either of the said Regulations IX. of 1822

Extension of enactments relating to embezzlement, &c., to similar offences by persons of certain classes.

and VII. of 1828, which apply to cases of the embezzling of public money, shall apply to cases of the embezzling of any public property whatever, by persons of any of the

classes described in the third clause of section 2 of the said Regulation IX. of 1822: all provisions of either of those Regulations, which apply to cases of the falsification, destruction, or concealment of any public account, record, voucher, or document relating to public money, shall apply to cases of the falsification, destruction, or concealment of any public account, record, voucher, or document, relating to any public property whatever, by persons of any of the said classes.

ACT NO. XVI. OF 1838.§

Suits, Bombay.

PASSED ON THE 23RD JULY, 1838.

1. First.—In the territories subject to the Presidency of

Suits to be brought in Civil, and not Revenue, Courts.

Bombay, all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be

* Act XXXVI. of 1837 has been declared in force throughout the Presidency of Madras, except as regards the Scheduled Districts by the Laws Local Extent Act (XV. of 1874), s. 4.

† This short title has been substituted by the Repealing and Amending Act (XI. of 1901).

‡ Certain formal words, repealed by the Repealing Acts (XIV. of 1870 and XVI. of 1874, respectively), have here been omitted.

§ Act XVI. of 1838 has been declared in force throughout the Presidency of Bombay, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5.

enjoyed by the parties concerned, and all suits in which the right to possession of land is claimed, shall be brought in the Courts of Adalat and the Courts subordinate thereto, and not in the Courts of revenue.

Second.—[*Repealed by Bombay Act III. of 1876.*]

Third.—[*Repealed by Bombay Act II. of 1866.*]

NOTE.

Orders passed before the passing of the Mamlatdar's Act (III. of 1876) are considered as orders passed under this Act.—14 Bom. 372; *see also* 1 B. 624.

2. If a suit be presented in the Court of a Judge or Collector, which such Judge or Collector shall not deem Procedure on suit being presented to superior Court doubting its jurisdiction. within his jurisdiction, the party presenting such suit shall be referred by the Court in which it may be first presented to that in which, in the opinion of such Court, the jurisdiction lies, and the latter Court shall, in the event of its doubting its jurisdiction in the case, refer the question of jurisdiction to the Sadr Diwani Adalat, whose decision on the point shall be final.

3. If a suit be presented in any Court subordinate to the Court of a Judge or Collector, which suit such subordinate Court shall not deem so doubting. within its jurisdiction, such subordinate Court shall submit the case to the Judge's or Collector's Court to which such subordinate Court is subordinate; and if the superior Court to which the case is so submitted shall be of opinion that such subordinate Court has jurisdiction in the case, such superior Court shall direct such subordinate Court to proceed with the case; and if such superior Court shall be of opinion that such subordinate Court has not jurisdiction in the case, such superior Court shall proceed in the manner directed in the last preceding section.

4. Whenever a Court of Adalat or a Revenue Court shall have entered on its file, under this Act, a suit in which it has not jurisdiction, it shall be competent to the Sadr Diwani Adalat, either on Transfer of suit entered in Court not having jurisdiction. a reference from the Judge or Collector (as the case may be), or on application from the parties, to direct that the suit be transferred, with all the proceedings which may have taken place therein up to the period of transfer, to the Court possessing jurisdiction, which shall proceed therewith as if the suit had been originally filed in that Court.

5. When any Court trying an appeal finds that the action was originally brought and decided in a Revenue Court, when it ought to have been brought and decided in a Court of Adalat, or a Court subordinate thereto, or that the action was originally brought and

decided in a Court of Adalat, or a Court subordinate thereto, when it ought to have been brought and decided in a Revenue Court, the Court trying the appeal shall, instead of quashing the whole proceedings, annul only the decree, and refer the suit to be tried in the Court to which the jurisdiction properly belongs, and the Court trying any such case referred under the foregoing section shall take further pleadings, exhibits, and evidence only if it deem such necessary, and shall pass a new decree.

ACT NO. XIX. OF 1838.*

Coasting Vessels, Pomtlay.

PASSED ON THE 27TH AUGUST, 1838.

1. [*Repealed by Act XIV. of 1870.*]

2. The following rules shall be in force with respect to vessels belonging to any of Her Majesty's subjects residing within the Presidency of Bombay, and employed on the coasts of the territories subject to the Government of Bombay, or in trading coast-wise, as also with respect to fishing-vessels and harbour-craft belonging to any of the same Her Majesty's subjects.

Rules as to coasting and other vessels belonging to Queen's subjects.

3. Every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall be marked or branded with the name of the place to which she belongs, and also with a number assigned for the same by the officer authorized to make such registry as is hereinafter mentioned;

Marking or branding vessels with name of place and number.

and the owner or owners of such vessel employed as aforesaid, fishing-vessel, and harbour-craft shall cause such name and number to be painted in black paint upon a white ground on each quarter of such vessel employed as aforesaid fishing vessel, and harbour-craft, in English figures and letters, each figure and letter being six inches in length.

Owner to paint name and number.

4. The name and number of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, and her burthen, and also the name or names of the owner or owners thereof, shall be registered in a book to be kept for that purpose by the person hereinafter directed to make such registry.

Registry of name number, and burthen.

* Act XIX. of 1838 has been declared in force throughout the Presidency of Bombay except as regards the Scheduled Districts by the Laws Local Extent Act (XV. of 1874), s. 5. See Act X. of 1841, *infra*.

At Bombay such registry shall be made by the Master-Attendant, and at other places within the said territories by the Collector of Sea-customs made.

at such places respectively, or by such other person as shall be appointed by the Government of Bombay to act at such places respectively in the execution of this Act; and whenever any change shall take place in the burthen of such

Fresh registration. vessel employed as aforesaid, fishing-vessel, or harbour-craft, or in the name or names of the owner or owners thereof, such registry shall be made again: provided, however, that it shall not be lawful to give any name to such vessel employed as aforesaid, fishing-vessel, or harbour-craft, other than that by which she was first registered.

5. The owner or owners of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall apply for registry. shall apply to the person authorized to make such registry in respect of the same, in order to have such registry as aforesaid made, or in order to have such registry made again as aforesaid.

And whenever such vessel employed as aforesaid, fishing-vessel, or harbour-craft, is registered at a subordinate port, information thereof, and of the number there assigned to her, shall immediately be given by the registering-officer to the Master-Attendant at Bombay.

6. The duty of marking or branding and of ascertaining the burthen of such vessels employed as aforesaid, fishing-vessels, and harbour-craft at Bombay shall be performed by the Master-Attendant; and at all other places within the territories subject to the Government of Bombay, the duty of marking or branding and of ascertaining the burthen of such vessels employed as aforesaid, fishing-vessels, and harbour-craft, shall be performed by the Collector of Sea-customs at such places respectively, or by such other persons as shall be appointed by the Government of Bombay to act at such places respectively in the execution of this Act.

7. The owner or owners of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall apply for and obtain a certificate of registry. shall apply for and obtain a certificate of registry from the person authorized to make such registry as aforesaid, and such certificate shall be in the form specified in the schedule appended to this Act; and in the case of any certificate being lost or destroyed, a renewed certificate may be obtained in the same manner and on payment of the fees hereinafter mentioned.

8. Such certificate of registry shall be sealed with the seal of the East India Company, and shall be signed by the person authorized to make such registry.

9. [*Repealed by the Repealing Act (XII. of 1876).*]

10. The owner or owners of such vessels employed as aforesaid (fishing-vessels and harbour-craft being excepted), on being registered, as aforesaid, shall pay—

for each certificate of registry for a vessel not exceeding 20 Bombay khandis burthen, the fee of	...	...	...	1 rupee.
for each certificate for a vessel exceeding 20 such khandis burthen, and not exceeding 100 khandis burthen	...	...	...	5 rupees.
for each certificate for a vessel exceeding 100 such khandis burthen and not exceeding 400 khandis burthen	...	...	...	7 "
and for each certificate for a vessel of 100 tons or greater burthen, per ton	...	...	...	2 annas.

11. The person or persons so authorized to make such registry as aforesaid shall receive the fees payable for the same, and shall pay such fees to such officer as the Governor of Bombay in Council shall appoint; the same to be carried to the credit of the Government of Bombay.

12. The owner or owners or commander of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall produce, on demand thereof by any officer of the Customs within the said territories, or by any officer of the Navy, the certificate so directed to be applied for and obtained, in respect of such vessel employed as aforesaid, fishing-vessel, or harbour-craft as above mentioned.

13. In case any such vessel employed as aforesaid, fishing-vessel or harbour-craft, shall not be so marked or branded in all respects as hereinbefore directed, or in case the name and number of any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall not be so painted, or shall not continue so painted on such vessel employed as aforesaid, fishing-vessel, or harbour-craft, in all respects as hereinbefore directed, or in case any such vessel employed as aforesaid, fishing-vessel, or harbour-craft shall not be furnished with such certificate as hereinbefore specified, or in case the owner or owners or commander of any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall not produce such certificate on demand thereof as hereinbefore directed, the owner or owners of every such vessel employed as aforesaid shall be subject to a fine of ten times the amount of the fees payable in respect of the certificate of registry of such vessel, the same being a vessel for the certificate of the registration of which any fee is payable; and the owner or owners of any such fishing-vessel or harbour-craft shall be subject to a fine of ten rupees, which fines may be recovered on conviction before any Magistrate having jurisdiction, within the said territories, by sale of such vessel, fishing-vessel or harbour-

Recovery of penalties.

craft, her furniture, amunition, tackle, and apparel; and such fines

Penalty on repetition of shall be payable as often as the owner or default. owners or commander of any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall make such default as aforesaid, provided every such subsequent default be made after the expiration of one month from the date of the last conviction.

NOTES.

Increase of burthen for temporary structure is not punishable, 14 Bom. 170.—

Ten times the fee.—The Legislature when it enacted that persons who committed certain acts should be "subject to a fine of ten times the fee" or subject to a fine of 10 rupees intended that the penalties so specified should be inflicted in full.—1. L. R., 7 Bom. 280.

14. The Governor of Bombay in Council may direct com-

Power to direct compensation for trouble and diligence in sation for trouble in seizing seizing such vessel employed as aforesaid, fishing-vessel, or harbour-craft, guns, furniture, tackle, ammunition and apparel, as last-mentioned, to be made out of the proceeds of such seizure, to the person or persons who shall have seized the same, to such amount, in such manner, and in such shares or proportions, as to the said Governor in Council shall seem meet.

SCHEDULE.

This is to certify that *(here insert the names, occupation, and residence of the owners)* having declared that (he or they) are sole owner or owners of the vessel (fishing-vessel or harbour-craft) called *(the name)*, which is of the burthen of *(number of Bombay khandis)*, and that the said vessel (fishing-vessel or harbour-craft) was *(where and when built)*, the said vessel (fishing-vessel or harbour-craft) has been duly registered at the port of *(name of port)*.

Certified under my hand.

(Signature of officer.)

ACT NO. XXV. OF 1838.*

The Wills Act, 1838.

PASSED ON THE 8TH OCTOBER, 1838.

1. It is hereby enacted that the words and expressions herein-
after mentioned shall in this Act, except
Interpretation. where the nature of the provision or the con-
text of the Act shall exclude such construction, be interpreted
as follows (that is to say):

* The whole Act (XXV. of 1838), except as to wills made before Jan. 1, 1866, has been repealed by the Repealing Act (VIII. of 1868).

As to wills made before Jan. 1, 1866, the Act has been declared, by the Laws Local Extent Act (XV. of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.—See the Laws Local Extent Act (XV. of 1874), s. 3.

Act XXV. of 1838 has been declared in force throughout British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

The word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament of devise of the custody and tuition of any child by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for Taking Away the Court of Wards and Liveries, and Tenures *in capite* and by Knight's Service and Purveyance, and for Settling a Revenue upon His Majesty in lieu thereof," or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for Taking Away the Court of Wards and Liveries, and Tenures *in capite* and by Knight's Service," and to any other Testamentary Disposition; and

the words "real estate" shall extend to messuages, lands, rents, and hereditaments whether corporeal, incorporeal, or personal, and to any undivided share thereof and to any estate, right or interest (other than a chattel-interest) therein; and

the words "personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein.*

NOTE.

Application.—This Act applies to the will of an East Indian whether domiciled within or beyond the Testamentary Jurisdiction of the High Court.—2 Hyde 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. 1874), to be in force in the following Scheduled Districts :—

West Jalpaiguri...	...	See <i>Gazette of India</i> ... 1881, Pt. I., p. 4.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum ...	...	Ditto ... 1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District ...	...	Ditto ... 1879, Pt. I., p. 383.
Jaunsar Bawar ...	...	Ditto ... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	...	Ditto ... 1886, Pt. I., p. 48.
The District of Lahaul ...	...	Ditto ... 1886, Pt. I., p. 301.
The District of Silhat ...	...	Ditto ... 1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills) ...	...	Ditto ... 1897, Pt. I., p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India*, 1876, Part I., p. 606

This title has been given by the Indian Short Titles Act (XIV. of 1897).

* Certain sentences after this repealed by the Repealing and Amending Act (X of 1914) have been omitted.

2.* An Act passed in the thirty-second year of the reign of King Henry the Eighth, intituled "The Act of Wills, Wards, and Primer Seisins, whereby a man may devise two parts of his land;" and also

Enactments repealed.

an Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled "The Bill concerning the explanation of Wills;" and also

an Act passed in the Parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how Lands, Tenements, &c., may be disposed by Will or Otherwise, and concerning Wards and Primer Seisins;" and also

so much of an Act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for Prevention of Frauds and Perjuries," and of an Act passed in the Parliament of Ireland in the seventh year of the reign of King William the Third, intituled "An Act for Prevention of Frauds and Perjuries," as relates to devises or bequests of lands or tenements, or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise or bequest therein; and also so much of an Act passed in the fourth and fifth years of the reign of Queen Anne, intituled "An Act for the Amendment of the Law and the Better Advancement of Justice," and of an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, intituled "An Act for the Amendment of the Law and the Better Advancement of Justice," as relates to witnesses to nuncupative wills; and

so far as the following Acts may be construed to have any operation within the territories of the East India Company,

so much of an Act passed in the fourteenth year of the reign of King George the Second, intituled "An Act to Amend the Law Concerning Common Recoveries," and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for Prevention of Frauds and Perjuries," as relates to estates *pur autre vie*; and also

an Act passed in the twenty-fifth year of the reign of King George the Second, intituled "An Act for Avoiding and Putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that Part of Great Britain called England, and in His Majesty's Colonies and Plantations in America;"† and also

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," prefixed to each of those sections, have been repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., and therefore omitted.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

an Act passed in the Parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the Avoiding and Putting an End to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates,"

shall, from the passing of this Act, cease to have effect in the territories of the East India Company, except so far as the same Acts or any of them respectively relate to any wills or estates *pur autre vie* to which this Act does not extend.

3.* This Act shall only extend to the wills of persons whose

Wills to which Act applies. personal property cannot by the law of England pass to their representatives without probate or letters of administration obtained in one of

Limitation of repeal.

Her Majesty's Supreme Courts of Judicature, and† the Statutes and parts of Statutes aforesaid are only repealed as far as they relate to the succession to the property of such persons.‡

4 * It shall be lawful for every person to devise, bequeath, or

Property disposable by will. dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator,

and† the power hereby given shall extend to all estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be a corporeal or an incorporeal hereditament, and whether the same shall be freehold or of any other tenure, and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Infant's will invalid.

5.* No will made by any person under the age of twenty-one years shall be valid.

* In ss 2 to 5, 7 to 20, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

† Here the word "that," repealed by Act XII. of 1891, Sch. I., has been omitted.

‡ See *Greenway v. Hogg*, *Bourke*, Part VII., pp. 116, 130.

6.* No will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

7.† No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say): it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.‡

NOTE.

Observance of formality required by the Act will be presumed unless the contrary appears from the face of the will.—In re *G. H. Davidson* Foulton 338 both witnesses must subscribe after the signature on the will has been made or acknowledged by the testator in the presence of the two. The filing of an exceptive allegation in the nature of objections upheld.—In re *Sir IV. Casement* Foulton 463.

8.† No appointment made by will in exercise of any power shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

9.† Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

10.† If any person who shall attest the execution of a will shall, at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

11.† If any person shall attest the execution of any will, to whom or whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate (other than and except charges and

* Here the words "Provided also, and it is hereby enacted that," repealed by Act XII. of 1891, Sch. I, have been omitted.

† In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that" originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I, and therefore omitted.

‡ See *Casement v. Fulton*, 3 Moo. I. A. 395.

directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person, attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

12.* In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Attesting witness, with whose debt estate is charged by will, admissible to prove it.

13.* No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Executor not incompetent to prove will.

14.* Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions).

Revocation of will by testator's marriage.

Will not revoked by presumption of intention.

15.* No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

16.* No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Will or codicil how revocable.

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

17.* No obliteration, interlineation, or other alteration made

Effect of obliteration, in-
terlineation, or alteration. in any will after the execution thereof, shall, be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or some other part of the will opposite or near to such alteration, or at the foot or end of or opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

18.* No will or codicil, or any part thereof, which shall be in

Revival of revoked will. any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in a manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

19.* No conveyance or other act made or done subsequently

Effect of acts not amount-
ing to revocation done sub-
sequent to execution. to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

20.* Every will shall be construed, with reference to the real

Will to be construed as if
executed immediately be-
fore death. estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

21.* Unless a contrary intention shall appear by the will, such

Property comprised in de-
vise which cannot take effect
to be included in residuary
devise. real estate and interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will.

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act Xii. of 1891, Sch. I, and therefore omitted.

22.* A general devise of the real estate of the testator, or of the real estate of the testor in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

23.* Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

24.* In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or any other words which may import either a want or failure of issue, of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate-tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate-tail to such person or issue, or otherwise; provided that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

25.* Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

26.* Where any real estate shall be devised to a trustee

Devise of real estate to trustee without limitation. without any express limitation of the estate, to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

27.* Where any person to whom any real estate shall be

Devise of estate-tail when devisee dies in testator's lifetime, leaving inheritable issue. devised for an estate-tail, or an estate in quasi entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

28.* Where any person, being a child or other issue of the

Devise to issue of testator, who dies in testator's lifetime, but leaves issue alive at testator's death. testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

29.* Notwithstanding anything in this Act contained, any

Saving of wills of soldiers and seamen. soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

NOTES.

It is established law that all soldiers, though receiving pay, and in performance of actual military duty, are not entitled to the privilege of making a military will; and the words "in actual military service" are to be taken as tantamount to the "in expedition" of the civilians; and that the Court may act on the definition of *expeditio* which is to be found in Colvin's *Lexicon Juridicum*.—Boulton 360.

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of these sections, have been repealed by Act XLII. of 1891, Sch. I, and therefore omitted.

In the new Wills Act the actual military service means field service—In re *Major De Bude*, Foulton 337

30. [*Savings of provisions of Act XX. of 1837*].—*Repealed by the Repealing and Amending Act (XII. of 1891), Sch. 1.*

31.* This Act shall not extend to any will made before the first day of February in the year of our Lord 1839, and† every will re-executed or re-published or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, re-published, or revived; and‡ this Act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of February in the year of our Lord 1839.

ACT NO. VII. OF 1839.†

The Madras Rent and Revenue Sales Act, 1839‡

PASSED ON THE 18TH MARCH, 1839.

1. [*Repeal of Act XXIII. of 1836*].—*Repealed by the Repealing Act (XIV. of 1870).*

2.|| All tahsildars within the territories subject to the Presidency of Fort St. George shall be vested with the powers of Commissioners for the sale of property distrained for arrears of rent or of revenue, and shall be subject to all rules and provisions to which by any law or regulation such Commissioners are subject.

3. Provided always that, in respect of the exercise of those powers, tahsildars shall be subject to the control and superintendence of the Collector, and shall not be subject to the authority of the Zilla Judge, except in the case of any judicial proceedings.

4. [*Their liabilities in exercise of same power*].—*Repealed by the Repealing and Amending Act (XII. of 1891), Sch. 1.*

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

† Here the word "that," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., has been omitted.

‡ Act VII. of 1839 has been declared to be in force throughout the Presidency of Madras, except as regards the Scheduled Districts; by the Laws Local Extent Act (XV. of 1874), s. 4.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

§ This short title has been given by the Repealing and Amending Act (XI. of 1901).

|| Certain words, repealed by the Repealing Act (XII. of 1873), have here been omitted.

5. Provided also that tahsildars shall not be entitled to any fee or commission for selling such distrained property, but that all fees or commission which may be now lawfully taken by Commissioners for the sale of such distrained property shall be taken and carried to the account of Government.

6. And it is hereby enacted that tahsildars shall have authority, subject to the orders of the Collector, to delegate the powers vested in them by the second section of this Act to any public servants placed under their authority, and that the provisions of "sections 3 and 5"* of this Act shall apply to all public servants to whom those powers shall have been so delegated, in the same manner as they apply to tahsildars.

ACT NO. XX. OF 1839.†

Levy of Haqq, &c., Bombay.

PASSED ON THE 29TH JULY, 1839.

1.‡ It shall be lawful for the Governor in Council of Bombay to issue orders prohibiting the levy of haqq, fees, and customs, whether by land or sea, enjoyed by holders of rent-free lands or other persons, and of alienated shares of any item of revenue after the abolition or relinquishment thereof by Government.

2.‡ The legality of any orders which may have been heretofore issued, or of any orders which, conformably with this Act, hereafter shall be issued by the Governor in Council of Bombay, for prohibiting the levy of any such haqq or fees, customs, or alienated shares of any such item of revenue as aforesaid, shall not be questioned in any Court of law.

3. Whoever shall levy any such haqq, fee, customs, or item of revenue after any such order prohibiting the same as aforesaid, shall have been

* The words quoted have been substituted for the words "the three last preceding sections" by the Repealing and Amending Act (XII. of 1891), Sch. II.

† Act XX. of 1839 has been declared to be in force throughout the Presidency of Bombay, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5. It has been declared, by Notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the Province of Sindh. See Notification No. 1234, dated Nov. 30, 1880, published in *Gazette of India*, 1880, Pt. I, p. 672, and in the *Bombay Government Gazette*, 1880, p. 1067. For orders issued under Act XX. of 1839, see *Bombay Government Gazette*, Sep. 12, 1872, p. 1015; *ibid.*, Feb. 13, 1873, p. 130.

‡ Certain words, repealed by the Repealing Act (XVI. of 1874), have here been omitted.

published in the Government Gazette of the Presidency of Bombay, and by notice fixed at the post or place at which it has heretofore been claimed or collected shall be punishable as for an undue exaction under Regulation XVII. of 1827,* section 16, of the Bombay Code, notwithstanding the offender be not a Revenue-officer of Government.

ACT NO. XXIV. OF 1839.

The Ganjam and Vizagapatam Act, 1839 †

PASSED ON THE 2ND OCTOBER, 1839.

An Act for the administration of Justice and collection of the Revenue in certain parts of the Districts of Ganjam and Vizagapatam.

1. [*Repeal of Act XXIII. of 1836*].—*Repealed by the Repealing Act (XIV. of 1870).*

2.‡ The operation of the rules for the administration of civil Exemption of districts and criminal justice, as well as those for the collection of the revenue, shall cease to have effect, except as hereinafter mentioned, within the undermentioned tracts of country at present included in the Districts of Ganjam and Vizagapatam :—

IN THE DISTRICT OF GANJAM.

Zamindaris.

Paluru.
Humma.§
Biridi.
Kallikota.
Pratapagiri.
Mohari.
Vijayanagaram.
Hathagada.
Brahmanorachi.
Chikati.
Mandasa.
Surangi.
Jarada.
Jalantra.
Budarasangi.

IN THE DISTRICT OF GANJAM.

Zamindaris.

Dharakota.
Bodagada.
Sherugada.
Tarla.
Parlakimidi.

Amani Estates.

Gumsara.
Surada.
Aska.
Pornary (leg. Komari ?).
Kurla.

* Repealed by Bom. Act V. of 1879.

† This short title has been given by the Repealing and Amending Act (XI. of 1901).

‡ Certain words, repealed by the Repealing Act (XVI. of 1874), have here been omitted.

§ In the "Hoomanah" of the current copies the "nah," (na) is the sign of the genitive.

IN THE DISTRICT OF VIZAGAPATAM.

Ancient Zamindaris.

Vijayanagaram.

Bobbili.

Hill Zamindaris.

Jayapuram.

Kurubham.

Sangamvalasa.

Chemudum.

Pachipenta.

Andhram.

IN THE DISTRICT OF VIZAGAPATAM.

Hill Zamindaris.

Sarvapalli-bhimavaram.

Saluru.

Madugula.

Belgam.

Merangi.

Under Amani.

Palakonda.

Golakonda.

3.* The administration of civil and criminal justice (including Administration of civil the superintendence of the police), and the and criminal justice in collection and superintendence of the those districts. revenues of every description, within the tracts of country specified in the foregoing section, which are now included in the District of Ganjam, shall be vested in the Collector of Ganjam, and within those which are now included in the District of Vizagapatam, in the Collector of Vizagapatam, and shall be exercised by them respectively as Agents to the Governor of Fort St. George.

4.* It shall be competent to the Governor in Council of Fort Power to prescribe rules St. George, by an order in Council, to for Government Agents. prescribe such rules as he may deem proper for the guidance of such Agents, and of all the officers subordinate to their control and authority, and to determine to what extent the decision of the Agents in civil suits shall be final, and in what suits an appeal shall lie to the Sadr Adalat, and to define the authority to be exercised by the Agents in criminal trials, and what cases he shall submit for the decision of the Faujdari Adalat.

5.* Upon the receipt of any criminal trials referred by either Judgment in criminal of the Agents under the rules which may trials referred by Agents be hereafter prescribed by the Governor to Faujdari Adalat. in Council, the Faujdari Adalat shall proceed to pass a final judgment, or such other order as may, after mature consideration, seem to the Court requisite and proper, in the same manner as if the trial had been sent up in ordinary course from a Judge on circuit.

NOTE.

In 1863 the Governor in Council by a notification under this Act constituted the agent a Sessions Judge under the Criminal Procedure Code,—14 M. 121.

* In ss. 3 to 8, the words, "And it is hereby enacted that," originally prefixed to each of those sections have been repealed by Act XVI. of 1874, and have therefore been omitted.

6.* Upon the receipt of any appeal from a decree of either Appeals to Sadr Adalat of the Agents, under the rules to be prescribed as aforesaid, the Court of Sadr Adalat shall proceed to try and determine it in the same manner as appeals from the Provincial Courts.

NOTE.

In appeals time taken for getting copies of judgment and decree will be deducted.—14 M. 365.

7.* Each of such Agents as aforesaid shall have the power of making commitments by warrant under his hand, which is possessed by the Governor of Fort St. George in Council by virtue of Regulation II. of 1819 of the Madras Code; provided that the third,† fifth, sixth, and seventh sections of that Regulation shall remain in force and be applicable to commitments under this Act; provided also that in every case in which either of such Agents shall make any such commitment, he shall transmit immediately a report to the Governor in Council of Fort St. George for his orders.

8.* It shall be competent to the Governor in Council of Fort St. George, by an order in Council, to make, from time to time,‡ such alterations in the limits of the tracts within the aforesaid districts placed under the jurisdiction of the said Agents respectively, as he may deem expedient.

ACT NO. XXIX. OF 1839.

The Dower Act, 1839.

PASSED ON THE 16TH DECEMBER, 1839.

An Act for the Amendment of the Law relating to Dower.

1. WHEREAS it is expedient to extend the amendments in the English law of dower contained in the Statute 3rd and 4th William IV., chapter CV., to the territories of the East India Company, in cases which, but for the passing of this Act, would be governed by the English law of dower as it existed previously to the passing of the aforesaid statute:

* In ss. 3 to 8, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XVI. of 1874, and have therefore been omitted.

† Here the word "fourth," repealed by Act XII. of 1894, Sch. I., has been omitted.

‡ The words requiring the assent of the Governor-General, repealed by Madras Act I. of 1865, have here been omitted.

§ The whole Act, except as to marriages contracted before first January 1866, was repealed by Act VIII. of 1868. As to its local extent, see the Laws Local Extent Act (XV. of 1874), s. 3.

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; that is to say, the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof.*

NOTE

The widow of an Armenian, married before the passing of Act XXXIX. of 1839, is entitled to dower out of lands which her husband held during the marriage for an estate of inheritance, as against, a Hindoo purchaser for value from the husband during his life, the English Law of dower having been recognised in this country amongst Europeans and Armenians as a branch of the law of inheritance.—I. L. R., 6 Cal. 794.

2.† When a husband shall die, beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint-tenancy), then his widow shall be entitled in equity to dower out of the same land.

3.† When a husband shall have been entitled to a right of entry or action in any land, and his widow shall not be necessary to give title to dower. would be entitled to dower out of the same

This Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpaiguri	See <i>Gazette of India</i> 1831, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the district of Singhbhum	Ditto ... 1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	Ditto ... 1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ... 1886, Pt. I., p. 48.
The District of Silhat	Ditto ... 1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)	Ditto ... 1897, Pt. I., p. 299.

It has been extended, under the same Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

* Certain words repealed by the Repealing and Amending Act (X. of 1914) have been omitted.

† In ss. 2 to 10, 12, and 14, the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof; provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

4.* No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime, or by his will.

No dower out of estates disposed of.

5.* All partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

Priority to partial estates, charges and specialty debts.

6.* A widow shall not be entitled to dower out of any land of her husband, when in the deed by which a declaration in a deed. such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land.

Dower may be barred by a declaration in a deed.

7.* A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband, duly executed for the devise of freehold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his lands.

Or by a declaration in the husband's will.

8.* The right of a widow to dower shall be subject to any conditions, restrictions, or directions which shall be declared by the will of her husband, duly executed as aforesaid.

Dower shall be subject to restrictions.

9.* Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his will.

Devise of real estate to the widow shall bar her dower.

10.* No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower, unless a contrary intention shall be declared by his will.

Bequest of personal estate to the widow shall not bar her dower.

* In ss. 2 to 10, 12, and 14, the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

11.* Provided always† that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.

12.* Nothing in this Act contained shall interfere with any rule of equity, or of any Ecclesiastical Court, by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

13. [*Certain dowers abolished*].—*Repealed by Act XII. of 1891, Sch. I.*

14.* This Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one thousand eight hundred and forty, and shall not give to any will, deed, contract, engagement, or charge executed, entered into, or created before the said first day of July one thousand eight hundred and forty, the effect of defeating or prejudicing any right to dower.

15.‡ This Act shall not be construed to affect any right of property in land otherwise than by modifying the law of dower in cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

ACT NO. XXX. OF 1839.‡

The Inheritance Act, 1839.

PASSED ON THE 16TH DECEMBER, 1839.

An Act for the Amendment of the Law of Inheritance.

1. WHEREAS it is expedient to extend the amendments in the English Law of inheritance contained in the Statute 3rd and 4th William IV., chapter CVI., to the territories of the East India Company in cases which, but for the passing of this Act, would be governed by the English

* In ss. 2 to 10, 12, and 14, the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† Here the words, "and it is hereby further enacted," repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ Here the words, "And it is hereby provided that," repealed by Act XII. of 1891, Sch. I., have been omitted.

§ The whole Act, except as to intestacies occurring before first January 1866, was repealed by Act VIII. of 1868. As to its local extent, see the Laws Local Extent Act (XV. of 1874), s. 3.

law of inheritance as it existed previously to the passing of the aforesaid statute.

It is hereby enacted that the words and expressions herein-Meaning of words in the after mentioned which in their ordinary Act signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction be interpreted as follows (that is to say), the word "land"

"Land." shall extend to messuages, and all other hereditaments, whether corporeal, or incorporeal, and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles, and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words "the purchaser"

"The purchaser." shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition, or enclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent; and the

"Descent." word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression

"Descendant." "descendants" of any ancestor shall extend to all persons who must trace their descent through such

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

West Jalpaiguri	See <i>Gazette of India.</i>	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	Ditto	... 1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	Ditto	... 1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto	... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu Dera Ismail Khan, and Dera Ghazi Khan	Ditto	... 1886, Pt. I., p. 48.
The District of Silhat	Ditto	... 1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)... ..	Ditto	... 1897, Pt. I., p. 299.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul. See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

S. 29 of the Trustees' and Mortgagees' Powers Act (XXVIII. of 1866), is to be read as part of Act XXX. of 1839. See Act XXVIII. of 1866, s. 29, *infra*.

ancestor; and the expression "the person last entitled to land"

"Person last entitled" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument other than a will by which any land shall be conveyed or transferred at law or in equity.*

"Assurance."

2.† In every case descent shall be traced from the purchaser,

Descent shall always be traced from the purchaser, but the last owner shall be considered to be the purchaser, unless the contrary be proved.

and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this Act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same, and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same.

3.‡ When any land shall have been devised by any testator,

Heir entitled under a will, shall take as devisee, and a limitation to the grantor or his heirs shall create an estate by purchase.

who shall die after the first day of July one thousand eight hundred and forty, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent; and when any land shall have been limited by any assurance executed after the said first day of July one thousand eight hundred and forty, to the person or the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

4.† When any person shall have acquired any land by

Where heirs take by purchase under limitations to the heirs of their ancestors the land shall descend as if the ancestor had been the purchaser.

purchase under a limitation to the heir or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July one thousand eight hundred and forty, or under a limitation to the heir or to the heirs of the body of any of his ancestors, or under any limitation hav-

* Certain words after this repealed by the Repealing and Amending Act (X. of 1910) have been omitted.

† In ss. 2 to 6 and 9 to 12 the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, and have therefore been omitted.

ing the same effect contained in a will of any testator who shall depart this life after the said first day of July one thousand eight hundred and forty, then and in any of such cases such land shall descend, and the descent thereof shall be traced, as if the ancestor named in such limitation had been the purchaser of such land.

5*. No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister, shall be traced through the parent.

Brothers, &c., shall trace descent through their parent.

6.* Every lineal ancestor shall be capable of being heir to any of his issue, and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

7.† None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and‡ no female paternal ancestor of such person, nor any of her descendants; shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and§ no female maternal ancestor of such person, or any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

The male line to be preferred.

8.† Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestors, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more

The mother of more remote male-ancestor to be preferred to the mother of the less remote male ancestor.

* In ss. 2 to 6 and 9 to 12 the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† In ss. 7 and 8, the words, "And it is hereby further enacted and declared that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

‡ Here the words, "also that," being repealed by Act XII. of 1891, Sch. I., have been omitted.

§ Here the word "that," being repealed by Act XII. of 1891, Sch. I., has been omitted.

remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor, and her descendants.

9.* Any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

10.* When the person from whom the descent of any land is to be traced shall have had any relation, who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the first day of July one thousand eight hundred and forty.

11.* This Act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of July one thousand eight hundred and forty.

12.* Where any assurance executed before the said first day of July one thousand eight hundred and forty, or the will of any person who shall die before that time, shall contain any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been made, shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living at the time aforesaid.

* In ss 9 to 12 the words "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

13.* This Act shall not be construed to affect inheritances of land, which are not subject to the English law of inheritance, or to extend or alter the jurisdiction of any of Her Majesty's Courts of justice.

ACT NO. XXXII. OF 1839.†

The Interest Act, 1839.

PASSED ON THE 30TH DECEMBER, 1839.

An Act concerning the allowance of Int. rest in certain cases.

1. WHEREAS it is expedient to extend to the territories under the government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV., Chapter 42,† section 28, concerning the allowance of interest in certain cases:§

It is therefore hereby enacted that upon all debts or sums certain, payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or

* In s. 13 the words, "And it is hereby provided that," originally prefixed to it have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† Act XXXII. of 1839 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws local Extent Act (XV. of 1874), s. 3; and also in the Arakan Hill Districts, by Reg. (IX of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See <i>Gazette of India</i> ... 1880, Pt. I., p. 672.
West Jalpaiguri, the Western Dvars, namely, that portion of the Jalpaiguri Division known as the Western Dvars, that is, the country lying between the Tista and Sunkos rivers in the Jalpaiguri District, the Western Hills of Darjiling (that is, the Hills west of the Tista river in the District of Darjiling), the Darjiling Tarai and the Damson Sub-division of the District of Darjiling	Ditto ... 1881, Pt. I., p. 74.
The District of Hazaribagh	Ditto ... 1881, Pt. I., p. 507.
Ditto Lohardaga	Ditto ... 1881, Pt. I., p. 508.
Ditto Manbhum	Ditto ... 1881, Pt. I., p. 509.
The Pargana of Dhalbhum in the District of Singbhum	Ditto ... 1881, Pt. I., p. 510.
The scheduled portion of the Mirzapur District	Ditto ... 1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ... 1879, Pt. I., p. 382.

sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing,|| so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.

NOTES.

Interest on balance of rent.—This Act does not affect claims to interest on balances of rent.—*M. Kashitreea v. Baloram Baboo*, 7 Sel. Rep. 556.

Applicability of Act XXXIII. of 1839 for recovery of revenue paid to Government.—This Act is inapplicable to claims for recovery of revenue paid to Government.—*W. Macpherson v. K. G. A. T. Stepphanoos* 7 Sel. Rep. 602. But see 1 Hay 500; Marshalls 239; 17 W. R. 172; 19 W. R. 98

Under this Act Court has power to grant interest on mortgage money, as it is money payable at a certain time, and under a written instrument.—21 Cal. 274.

Where there is no provision for payment of post diem interest, it should be paid under this Act.—18 Mad. 248, See also 17 A. 581.

As to interest on mesne-profit, referring to the proviso at the end of Act XXXII of 1839, and to the resolution of the Sudder Court in 1850, the Privy Council awarded interest upon the mesne-profits from the commencement of suit to the date of the decree.—1. L. R., 3 C. 654=5 I. A. 31; 1. L. R., 4 Cal. 882 =4 C. L. R. 60; 6 C. L. R. 357.

Interest is given under Act XXXVI. of 1839 by way of damages on the ground that a debtor has wrongfully refused to pay; but where there is no hand to receive payment, and to give a complete discharge, there can be no wrongful refusal.—1. L. R., 7 Cal. 594=10 C. L. R. 561.—See also 7 Bom. L. R. 798;

The Scheduled Districts of the Central Provinces ...	See <i>Gazette of India</i> ...	1879, Pt. I. p. 771.
The Districts of Hazira, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	Ditto	... 1886, Pt. I., p. 48.
The District of Lahaul ...	Ditto	... 1886, Pt. I., p. 301.
The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Kachar (excluding the North Kachar Hills) ...	Ditto	... 1878, Pt. I., p. 534.
The District of Silhat ...	Ditto	... 1879, Pt. I., p. 631.
The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Kachar Hills in the Kachar District and the Eastern Dvars in the Goalpara District ...	Ditto	... 1897, Pt. I., p. 299.
It has been extended under the same Act, to the following Scheduled Districts:—		
Kumaon and Garhwal ...	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
The North-Western Provinces		
Tarai ...	Ditto	... 1876, Pt. I., p. 505.
† Short title, "The Civil Procedure Act, 1833."	See Short Titles Act, 1896 (59 and 60 Vict., c. 14).	
§ See 6 Moo. I. A. 232; 7 ib., 263; 10 ib., 229.		
|| See 1 Beng. O. C. J. 41; Marshall 239.		

1 M. H. C. 369. This Act is not applicable to opium wagers.—4 W. R. (P. C.) 8. Interest cannot be legally awarded prior to suit in cases governed by this Act.—6 W. R. Mis. 109; 7 Bom. L. R. 798.

Printed heading to a bill is a notice.—A. W. N. 1887, 287.

Letter demanding interest up to its date is an implied notice of claim for future interest.—23 M. 41. See also 181 P. L. R. 1901.

This Act does not apply to a debt on a foreign judgment.—28 C. 641=5 C. W. N. 741.

In construing this Act English decisions may be referred to.—26 A. 299=31 I. A. 116=8 C. W. N. 521 (P. C.). Where there is express provision not to pay interest the Court cannot allow interest.—5 Ind. Cas. 285.

To come within this Act it must be shown, (1) that a certain sum is payable at a certain time by a written instrument, (2) that a demand of payment was made in writing giving notice that interest will be claimed.—1 S. L. R. 179. See also 26 C. 955; 31 B. 354; 5 M. L. J. 154; 18 M. 338 note; 7 C. W. N. 876; 27 C. 814=4 C. W. N. 818; 25 C. 54; 181 M. R. 1901. As regards Courts' power to allow compound interest, *vide* 1 C. W. N. 219; see also 1 C. W. N. 437 (F. B.). As regards the question of limitation in allowing interest, *vide* 18 M. 331.

Neither the Interest Act nor the Indian Contract Act affects rule of Hindu Law that in the case of debt wrongfully withheld, after demand of payment has been made, interest becomes payable from the date of demand.—31 B. 354=9 Bom. L. R. 439.

For object and meaning.—*Vide* 52 P. W. R. 1907.

Interest Act does not apply to suits to enforce foreign judgment.—75 P. R. 1909.

Rugga silent as to interest—No notice claiming interest—Right to interest.—39 P. R. 1913.

Money obtained by fraud and retained by fraud can be recovered with interest.—21 Ind. Cas. 394.

A debt which is specifically expressed in measure of grain and payable at a certain specified time should be regarded as a debt certain.—38 M. 464.

Principal is not entitled to have interest from the agent.—50 Ind. Cas. 696. See also 50 Ind. Cas. 673. Sum payable under written instrument—Interest whether can be claimed.—*Vide* 52 Ind. Cas. 953.

The Interest Act is not exhaustive of all claims as to interest and it is open to the Courts in India to award interest in cases not coming within the purview of the Act, on principles of equity, justice and good conscience. This Act is applicable to a debt or certain sum payable at a certain time or otherwise. It has no application to an unascertained sum claimed as the profits of a trade.—42 M. 661.

Interest by way of damages is not recoverable for the mere wrongful detention of an ordinary debt.—4, Ind. Cas. 737.

ACT NO. VIII. OF 1840.*

The Panchayats Act, 1840.†

PASSED ON THE 13TH APRIL, 1840.

An Act concerning the signing of Awards by the members of Panchayats.

IT is hereby enacted that in cases where the minority of the members of a panchayat, held under the provisions of the Madras Code,‡ may decline to sign the award of the panchayat, the signature or mark of the majority shall be sufficient to give legal validity to the award; provided always that in such cases it shall be incumbent on such majority to admit the minority to record and attest by their mark or signature their reasons for declining to sign or mark the award passed by the majority.

ACT NO. XV. OF 1840.§

Agents of Foreign Sovereigns, &c., Bombay.

PASSED ON THE 29TH JUNE, 1840.

An Act for extending Regulations XV. of 1827 and XIII. of 1830 of the Bombay Code to the Agents of Foreign Sovereigns.

IT is hereby enacted that the provisions of Regulations XV. of 1827|| and XIII. of 1830 of the Bombay Code be made applicable to the Agents of Foreign Sovereigns having lands and possessions in the British territory, of the Bombay Presidency, and to guardians and such other individuals as the Governor in Council of Bombay may consider it expedient to invest with the powers contained in the aforesaid Regulations; provided that in all cases the authority conferred shall be revocable at the discretion of the Governor in Council of Bombay.

* Act VIII. of 1840 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

† This short title has been substituted by the Repealing and Amending Act (XI. of 1901).

‡ See Reg. V. of 1816, s. 7.

§ Act XV. of 1840 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts by the Laws Local Extent Act (XV. of 1874), s. 5. Act XVII. of 1840 has been repealed, so far as it relates to Bombay Regulation XV. of 1827, by Act XVI. of 1874.

Every jagirdar and other authority invested with powers under Bom. Reg. XIII. of 1830 and Act XV. of 1840 shall, for the purposes of the Dekkhan Agriculturists' Relief Act, 1879, be deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct.—See (Act XVII. of 1879), s. 2A.

As to the application of the Civil Procedure Code in cases in which jurisdiction is exercised by authorities invested with powers under Act XV. of 1840, and in appeals to the Civil Courts.—See (Act XIV. of 1882), s. 7.

|| Reg. XV. of 1827 has been repealed by Act XVII. of 1862.

ACT NO. X. OF 1841.*

The Indian Registration of Ships Act, 1841.

PASSED ON THE 5TH JULY, 1841.

An Act for prescribing the Rules to be observed, in order that ships or vessels belonging to ports within the territories under the government of the East India Company, or belonging to Native Princes or States, or their subjects, may become entitled to the privileges of British ships under a proclamation of the Governor-General of India in Council, made in pursuance of the Statute 3rd & 4th Victoria, ch. 56.†

1. WHEREAS by a statute passed in the 3rd and 4th years of Her Majesty Queen Victoria, entitled "An Act to regulate the trade of ships built and trading within the limits of the East India Company's Charter," it is enacted "that it shall be lawful for the Governor-General of India in Council, by proclamation,‡ to declare that all ships or vessels built or to be built within the limits of the Charter of the East India Company, being owned by Her Majesty's subjects, for whom the said Governor-General in Council has power to legislate, and belonging, under the regulations hereinafter provided for, to any ports in the territories under the Government of the said Company, shall be deemed to be British ships for all the purposes of trade within the said limits, including the Cape of Good Hope, and the territories and dependencies thereof; provided that upon such declaration being made, the said Governor-General in Council shall, and the said Governor-General in Council is hereby accordingly empowered to, make regulations, to be enforced by suitable penalties, concerning the registering, licensing, and ascertaining the admeasurement of the tonnage and burden, and generally for the trading within the limits aforesaid of such ships or vessels;

and whereas it is further enacted in the same Statute as follows, that is to say, "And whereas it may be expedient to admit to similar privileges and advantages any ships or vessels belonging to Native Princes or States in subordinate alliance with, or having

* Act XI. of 1850 (*infra*) is to be construed with, and as part of, this Act—See s. 5 of that Act, *infra*.

Certain formal words in sections 2 to 6, 8 to 12, 14 to 19, 21, and 23 to 26, repealed by Act XVI. of 1874, have been omitted.

Act X. of 1841 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 3.

It has been declared under the Scheduled Districts Act (XIV. of 1874) to be in force in the following Scheduled Districts:—

Sindh	...	...	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
Aden	...	...	...	Ditto	...	1879, Pt. I., p. 43.
The District of Silhat	...	...	...	Ditto	...	1879, Pt. I., p. 63Y

† See *Graham v. Spooner*, 4 Moo. l. A. 179

‡ See page 37, *infra*.

subsidiary treaties with, the East India Company, or owned by subjects of any such Princes or States, be it therefore enacted that the Governor-General of India in Council may, by such regulations as aforesaid, such regulations being subject as aforesaid, admit to the privileges and advantages of British ships for the purposes of trade within the limits of the Charter of the said Company, including the Cape of Good Hope, and the territories and dependencies thereof, or to any of such privileges and advantages, any ships or vessels belonging to such Princes or States, or any of them, or owned by subjects of any such Princes or States; but any such regulations shall provide for the granting to such ships or vessels fit and convenient licenses or passes, and generally for the trading within the limits aforesaid of such ships or vessels;”

and whereas, in pursuance of such enactments, it is expedient to frame such regulations as are mentioned therein, the compliance with which shall be required in order that ships or vessels may be deemed British ships, or be admitted to the privileges and advantages of British ships under such proclamation as aforesaid:

It is hereby enacted that no ship or vessel shall be deemed a ^{Ships to be registered.} British ship under such proclamation as ^{Certificate of registry} aforesaid (except as regards ships or vessels registered before the passing of this Act, or having a pass at the time of passing thereof) unless the person or persons claiming property therein shall have caused the same to have been registered at some one of the ports hereinafter mentioned within the territories of the East India Company, and shall have obtained a certificate of such registry from the person or persons authorized to make such registry and grant such certificate as hereinafter directed; the form of which certificate shall be as follows:—

“This is to certify that, in pursuance of the Act No. X. of 1841 of the Governor-General of India in Council (here insert the names and occupation and residence of subscribing owners) having made and subscribed the declaration required by the said Act, and having declared that (he or they) together with (names, occupations, and residence of non-subscribing owners), (is or are) sole owner or owners, in the proportions specified on the back hereof, of the ship or vessel called the (ship's name) of (place at which the vessel shall be registered), which is of the burthen of (number of tons), and whereof (master's name) is master, and that the said ship or vessel was (when and where built) and (name and employment of surveying officer) having certified to us that the said ship or vessel has (number) decks and (number) masts, that her (here insert the measurement as ascertained by the rules hereinafter mentioned) that she is (how rigged) with a (standing or running) bowsprit, is (description of stern) sterned, (carvel or clincher) built, has (whether any or no) gallery, and (kind of head, if any) head; and the said subscribing owners having consented and

agreed to the above description, the said ship or vessel, called the (name), has been duly registered at the port of (name of port), certified under our hands at the custom house in the said port of (name of port), this (date) day of (name of month) in the year (words at length).

(Signed)———, Collector or Registrar of Shipping.

And on the back of such certificate of registry there shall be an account of the parts or shares held by each of the owners mentioned and described in such certificate, in the form and manner following:—

<i>Name of several owners within mentioned.</i>			<i>Number of shares held by each owner.</i>
Name	...	...	... Thirty-two.
Name	...	...	... Sixteen.
Name	...	...	... Eight.
			&c., &c.

(Signed)———, *Collector.*

2. The ports at which registration shall be made shall be the ports of Calcutta, Madras, Bombay,* and such other places subordinate to the Local Governments, of India as such Governments respectively may, from time to time, declare to be registering ports under this Act :

Provided that ships or vessels built at any place other than any of such ports shall be allowed to make their first voyage to any of such ports, being the ports at which it is intended they shall be registered under a certificate to be granted by the principal British officer at the place where the ship is built, or if there be no British officer in authority there, then by three merchants of such place, which certificate shall contain all the particulars with regard to the ownership and description of the ships or vessels contained in a certificate of registry, and shall specify the ports at which it is intended that they shall respectively be registered, and which certificate shall have all the effect of a certificate of registry under this Act, during the first voyage from the place of building to the ports at which the ships or vessels respectively shall be afterwards registered. Provided that such ships or vessels so proceeding on their first voyage as aforesaid shall be deemed British ships only whilst duly prosecuting such first voyage for the purpose of registry, and if they be not registered within a reasonable time after their arrival at the port of registry, the owner or owners, or master or other person having or taking the command

* Here the word "Singapore," repealed by s. 1 of Act VII of 1891, has been omitted.

or charge of such ship or vessel, shall be liable,* on conviction before a Justice of the Peace or a Magistrate of the first class, to a penalty not exceeding 5,000 rupees.

3. The persons authorized to make such registry and to grant such certificates as aforesaid shall be "such Registrars. persons" † as the Local Governments may from time to time appoint for the ports under their respective Presidencies.

4. At every port where registry shall be made in pursuance of this Act a book shall be kept by the registering officer, in which all the particulars contained in the form of the certificate of the registry hereinbefore directed to be used shall be duly entered; and every registry shall be numbered in progression, beginning such progressive numeration at the commencement of each and every year. And such registering officer shall forthwith or within one month at the furthest, send to the Government of the Presidency to which he is subordinate a true and exact copy, together with the number of every certificate which shall be by him so granted.

5. No registry shall henceforth be made, or certificate be granted, until the following declaration be made or subscribed before the registering officer, by the owner or major part of the owners, of the ship or vessel required to be registered.

I, *A. B.*, (of place of residence and occupation) do truly declare that the ship or vessel (name) of (port or place) whereof (master's name) is at present master, being (kind of build, burthen, *et cetera*, as described in the certificate of the surveying officer), was (when and where) built, and that I, the said (*A. B.*), and the other owners (names and occupations if any, and where they respectively reside) am (or are) sole owner (or owners) of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share, or property therein or thereto; and that I, the said (*A. B.*), and the said other owners (if any) am

* In ss. 2, 15, 17, and 23, for the words, "on information in any Court of Her Majesty or the East India Company by the Advocates-General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occurred, the words "on conviction before a Justice of the Peace or a Magistrate of the first class" were substituted by the Indian Merchant Shipping Act (IV. of 1875), s. 30. But Act IV of 1875 has been repealed and superseded by the Indian Merchant Act (V. of 1883), s. 38 of which enacts that in ss. 2, 15, 17, and 23 of Act X. of 1841 for the words, "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occurred, the words, "on conviction before a Presidency Magistrate or a Magistrate of the first class," shall be substituted.

† In s. 3, the words quoted have been substituted for the original words by Act VII. of 1891, s. 2.

(or are) truly and *bonâ fide* a subject (or subjects) of Her Majesty for whom the Governor-General of India in Council has power to legislate, and that no person not being subject as aforesaid, directly or indirectly, hath any share or part interest in the said ship or vessel. Provided that, if the registering officer shall see occasion to doubt the truth of any of the facts contained in the above declaration, he shall not deem such declaration to be conclusive, but may refuse the registry or certificate, and his discretion exercised in this behalf shall be subject only to an appeal to the Local Government to which he is subordinate.

6. In case the required number of joint owners of any ship or vessel shall not personally attend to make and subscribe the declaration hereinbefore directed to be made and subscribed, then and in such case such owner or owners as shall personally attend and make and subscribe the declarations aforesaid, shall further declare that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not, to the best of his or their knowledge or belief, wilfully absented himself or themselves in order to avoid the making the declaration hereinbefore directed to be made and subscribed, or is or are prevented by illness from attending to make and subscribe the said declaration.

7. And in order to enable the registering officer to grant a certificate truly and accurately describing every ship or vessel to be registered in pursuance of this Act, and also to enable all other officers of customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted, it is hereby enacted that previous to the registering or granting of any certificate of registry as aforesaid some one or more person or persons appointed by the Local Governments respectively, taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons skilled in the building and admeasurement of ships, shall go on board of every such ship or vessel that is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel as to all and every particular contained in the form of the certificate hereinbefore directed in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the owner or owners, or in his or their absence by the said master, and shall deliver a true and just account in writing of all such particulars of the build, description, and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited to the officer authorized to make such registry and grant such certificate of registry as aforesaid; and the said master or other person attending on the part of the owner or owners is hereby required to sign his name also to the certificate of such

surveying or examining officer, in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

"8.* The certificate of the surveying officer shall be in the form in the schedule to this Act or in such other form as the Governor-General in Council may from time to time prescribe; and such certificate shall be delivered to the registering officer before registry.

"9.* Subject to the provisions of section 70 of Act I. of 1859 (an Act for the amendment of the law relating to Merchant Seamen), as amended by section 9 of the Indian Merchant Seamen's Act, 1876, the tonnage of a ship or vessel required by law to be registered shall, previous to her being registered, be measured and ascertained according to such of the rules and orders for the time being in force in and under the Merchant Shipping Act, 1854, as amended by subsequent Acts [including the Merchant Shipping (Tonnage) Act, 1889] as apply to measurement of tonnage for the purpose of registry.

"10.† Subject to the provisions referred to in the last foregoing section, the tonnage of a ship or vessel requiring to be measured for any purpose other than registry shall be measured and ascertained according to such of the rules and orders for the time being in force in and under the Merchant Shipping Act, 1854, amended as aforesaid, as apply to measurement of tonnage for a purpose other than registry.

"11.† The rules and orders referred to in section 9 and section 10 of this Act shall, in their application to measurement of tonnage for the purposes of this Act, or of any enactment, rule, or order referring to this Act, be read and construed as if the Governor-General in Council were therein named instead of the Board of Trade or the authority for which the Board of Trade has been substituted by section 3 of the Merchant Shipping Act, 1872."‡

"12.† The true amount of the register tonnage of every ship or vessel to be measured and ascertained according to the rules and orders referred

* Ss. 8 to 12 have been substituted by Act VII. of 1891, s. 3 for those originally enacted. The original sections dealt with rules of measurement as to depth, length, breadth, tonnage, &c., mode of measurement for steam-vessels; new registry requisite upon every alteration in the cubical contents of engine-room; rules of measurements as to ships having there cargoes on board; and registered tonnage to be carved in figures on every vessel prior to registry.

† Ss. 8 to 12 have been substituted by Act VII. of 1891, s. 3, for those originally enacted.

‡ See now the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), by which these acts have been repealed and their provisions re-enacted.

to in section 9 of this Act shall be deeply carved or cut in figures of at least three inches in length on the main beam of every such ship or vessel prior to her being registered."

13. [*Repealed by Act No. XI. of 1850, s. 1.*]

14.* Whenever the register tonnage of any ship or vessel shall have been ascertained according to the Registered tonnage to be repeated in every subsequent register. "said rules and orders," such account of register tonnage shall ever after be deemed the register tonnage of such ship or vessel, and shall be repeated in every subsequent registry of such ship or vessel, unless it shall happen that any alteration has been made in the form of burthen of such ship or vessel, or it shall be discovered that the register-tonnage of such ship or vessel had been erroneously taken and computed.

15. If such certificate as aforesaid shall be sold, lent, or otherwise Fraudulent use of certificate. disposed of to any person or persons whatever than those for whose use it is granted, or shall be made use of for the service of any other ship or vessel than the ship or vessel for which it is granted, such certificate shall thenceforth be utterly void; and the master or any owner of the ship or vessel who shall be proved to have sold, lent, or disposed of such certificate, or made use of the same as aforesaid, or shall have concurred in or been privy to the committing any such offence, shall be liable, on conviction before a Presidency Magistrate or a Magistrate of the first class† to a penalty not exceeding 10,000 rupees. And in case such ship or vessel shall be lost or taken by the enemy, burnt, or broken up, or otherwise prevented from returning to the port at which she is registered, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall have been sold to the Crown,‡ or shall under any circumstances have been registered *de novo*, the certificate, if preserved, shall be delivered up, within one month after the arrival of the master in any port or place in the territories of the East India Company, to the registering officer at such port, in default whereof the master or any of the owners shall be liable, on conviction before a "Presidency Magistrate or a Magistrate of the first class,"§ to a penalty not exceeding 5,000 rupees.

And if any person not being such subject as aforesaid shall purchase or otherwise become entitled to the whole or to any part

* In s 14, before the word "tonnage," wherever it occurs, the word "register" has been prefixed; and the words, "said rules and orders," have been substituted for the words "rules herein prescribed."—See Act VII. of 1891, s. 4.

† As amended by Act V. of 1883, s. 38.

‡ Here the words, "or the East India Company," being repealed by Act VII. of 1891, s. 5, have been omitted.

§ The words quoted have been substituted by Act V. of 1883, s. 38.

or share of, or any interest in, such ship or vessel, and the same shall be within the limits of any port of the territories of the East India Company, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the registering officer at such port, and if such ship or vessel shall be in any place not within the territories of the East India Company when such purchase or transfer of property shall take place, then the certificate shall be delivered up within fourteen days after the arrival of such ship or vessel, or of the master thereof, in any port of the territories of the East India Company, to the registering officer at such port, in default whereof the master or any of the owners shall be liable, on conviction before any Justice of the Peace, to a penalty not exceeding 5,000 rupees, recoverable in manner provided by "the law for the time being in force for the recovery of fines imposed by Criminal Courts."*

16. When and so often as the master of any ship or vessel registered in manner hereinbefore directed

Change of master.

shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinbefore authorized to make such registry and grant such certificates of registry at the port where such change shall take place, if it be a port within the territories of the East India Company, the certificate of registry belonging to such ship or vessel, who shall thereupon indorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act, who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof in like manner as of the original entry. But if the change do not take place in any port within the territories of the East India Company, then such delivery, memorandum, and indorsement, shall be made, and notice given at the first port within the territories of the East India Company at which the new master shall arrive after such change. In default of which delivery of the certificate such new master or any of the owners shall be liable, on conviction before a Justice of the Peace, to a penalty not exceeding 5,000 rupees, recoverable as aforesaid

17. It shall not be lawful for any owner or owners of any

Name of ship.

ship or vessel to give any name to such ship or vessel other than that by which she was first registered in pursuance of this Act; and* the owner or owners of all and every ship or vessel which shall be so registered shall, before such ship or vessel, after such registry, shall begin to take in any cargo, paint or cause to be painted, in white or

* The words quoted have been substituted by Act VII. of 1891, s. 5.

yellow letters of a length of not less than four inches, upon a black ground on some conspicuous part of the stern, the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same.

And* if such owner or owners or master or other person having or taking the charge or command of such ship or vessel, shall permit such ship or vessel to begin to take in cargo before the name of such ship or vessel has been so painted as aforesaid, or shall wilfully alter, erase, obliterate, or in any wise hide or conceal, or cause or procure or permit the same to be done, or shall in any written or printed paper, or other document, describe such ship or vessel by any name other than that by which she was first registered pursuant to this Act, or shall verbally describe, or cause or procure or permit such ship or vessel to be described, by any other name to any officer or officers of revenue in the due execution of his or their duty, then and in every such case the certificate of registry shall thenceforth become utterly void, and such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall be liable, on conviction before a "Presidency Magistrate or a Magistrate of the first class,"† to a penalty not exceeding 10,000 rupees, "recoverable as aforesaid."‡

18. All and every person and persons who shall apply for a certificate of building, certificate of the registry of any ship or vessel shall, and they are hereby required to, produce to the person or persons authorized to grant such certificate, a true and full particular under the hand of the builder of such ship or vessel, or in case the want of such certificate can be satisfactorily accounted for, then to produce other sufficient evidence of the proper denomination, and of the time when and the place where such ship or vessel was built, and also an exact account of the tonnage of such ship or vessel, and shall also make and subscribe a declaration before the person or persons hereinbefore authorized to grant such certificate that the ship or vessel for which such certificate is required is the same with that which is so described by the builder as aforesaid.

19. If the certificate of registry of any ship or vessel shall be lost or mislaid, so that the same cannot be found or obtained for the use of such ship or vessel when needful, and proof thereof shall be made to the satisfaction of the registering officer of the port at which the ship is registered, such officer shall and may, where the certificate shall have been lost or mislaid, permit such ship or vessel to be registered *de novo*, and a certificate thereof to be granted:

* Here the word "that" has been repealed by Act VII. of 1891, s. 6 (f).

† The words quoted have been substituted by Act V. of 1883, s. 38.

‡ The words quoted have been added by Act VII. of 1891, s. 6 (f).

Provided always that if such ship or vessel be absent and far distant from the port to which she belongs, or by reason of the absence of the owner or owners, or of any other impediment, registry of the same cannot then be made in sufficient time, such registering officer shall and may grant a license for the present use of such ship or vessel, which license shall, for the time and to the extent specified therein, and no longer, be of the same force and virtue as a certificate of registry granted under this Act:

Provided always that if the certificate of registry shall at any time afterwards be found, the same shall be forthwith delivered to the proper officers of customs to be cancelled, and that no illegal use be made of the same, in default whereof the original certificate and the renewed certificate and license shall thenceforth become utterly void, and any person wilfully detaining the certificate so required to be cancelled, or making any illegal use thereof, shall be liable, on conviction before any Justice, to a penalty not exceeding 5,000 rupees, recoverable as aforesaid.

20. And whereas it is not proper that any person under any pretence whatever should detain the certificate of registry of any ship or vessel, or hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted, it is therefore hereby enacted that—

In case any person who shall have received or obtained, by any means or for any purpose whatever, the certificate of the registry of any such ship or vessel (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel or not) shall wilfully detain and refuse to deliver up the same to the proper officers of customs, for the purposes of such ship or vessel as occasion shall require, or to the person or persons having the actual command, possession, and management of such ship or vessel as the ostensible and reputed master, or as the ostensible and reputed owner or owners thereof, it may and shall be lawful to and for any such last-mentioned person to make complaint on oath of such detainer and refusal to any Justice of the Peace residing near to the place where such detainer and refusal shall be;

and on such complaint the said Justice shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him to be examined touching such detainer and refusal;

and if it shall appear to the said Justice on examination of such person or otherwise that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be subject, on conviction before such Justice, to a penalty not exceeding 1,000 rupees, recoverable as aforesaid, and the said Justice shall, and he is hereby required to, certify the aforesaid de-

tainer, refusal, and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo* ;

and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the Justice cannot be executed upon him, and proof thereof shall be made to the satisfaction of the registering officer of the port at which the ship or vessel was registered, it shall be lawful for the said officer to permit such ship or vessel to be registered *de novo*, or otherwise, in his discretion, to grant a license for the present use of such ship or vessel in like manner as is hereinbefore provided in the case wherein the certificate of registry is lost or mislaid.

21. If any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall, in any manner whatever, be altered so as not to correspond with all the particulars contained in the certificate of her registry, or if any alteration shall take place in the ownership of any ship or vessel, or of any share or shares thereof, in such cases such ship or vessel shall be registered *de novo* in manner hereinbefore required as soon as she returns to the port to which she belongs, or to any other port within the territories of the East India Company, on failure whereof such ship or vessel shall be deemed to be a ship or vessel not duly registered, and any person making use of a certificate for the purposes of any ship or vessel which has been granted in respect of the same, after the same ought to have been registered *de novo*, shall be liable, on conviction before any Justice, to a penalty not exceeding 5,000 rupees, recoverable as aforesaid.

22. And whereas great inconvenience may arise from the registering officers being served with subpoenas requiring them to bring with them and produce, on trials in Courts of law relative to the ownership of vessels, or otherwise, the declarations required to be taken by the owners thereof prior to the registering thereof, and the books of registry, or copies or extracts therefrom; and whereas it would tend much to the despatch of business if the attendance of such registering officers with the same upon such trials were dispensed with, it is therefore hereby enacted that—

The registering officer at any port or place, and the person or persons acting for them respectively, shall, upon every reasonable request by any person or persons whomsoever, produce and exhibit, for his, her, or their inspection and examination, any declaration made by any such owner or owners, and also any

register or entry in any book or books of registry required, and shall, upon every reasonable request by any person or persons whomsoever, permit him, her, or them to take a copy or copies, or an extract or extracts thereof respectively, and that the copy or copies of any such oath or declaration, registry or entry, shall, upon being proved to be true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any registering officer, or other person or persons acting for them respectively, in all cases, as fully and to all intents and purposes as such original or originals, if produced by any registering officer, or other person or persons acting for them, could or might legally be admitted or received in evidence.

23. If any person or persons shall falsely make declaration to any of the matters hereinbefore required to be verified by declaration, or if any person or persons shall counterfeit, erase, alter, or falsify any certificate or other instrument in writing required or directed to be obtained, granted, or produced by Falsifying documents. this Act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, or falsified, or shall wilfully grant such certificate or other instrument in writing knowing it to be false, such person or persons shall, for every such offence, be liable, on conviction before a "Presidency Magistrate or a Magistrate of the first class,"* to a penalty not exceeding 10,000 rupees, "recoverable as aforesaid."† And if any such offence be committed by the owner of any ship or vessel, the certificate of such ship or vessel shall thenceforth be wholly void.

24. When any ship or vessel duly registered under this Act, or sailing under the British navigation law, Ships of Native States. shall come to be owned by a Native Prince or State, or by any subject of such Native Prince or State as aforesaid, it shall be lawful for the Governor of Fort William in Bengal, or for the Governor in Council of any Presidency, to continue to such ship or vessel the privileges and advantages of a British ship for the purposes aforesaid by a pass to be subscribed by a Secretary to Government, stating the voyage or voyages for which the same is to have effect, and the period for which it is to last; and it shall be lawful "for a Local Government"§ to issue a similar pass conferring the privileges and advantages of a British ship for

* The words quoted have been substituted by Act V. of 1883, s. 38.

† The words quoted have been added by Act VII. of 1891, s. 7.

‡ Here the words, "issued under the Company's seal and," repealed by Act VII. of 1891, s. 8, have been omitted.

§ The words quoted have been substituted for the words "for the Governor of Fort William in Bengal, or the Governor in Council of any Presidency," by Act VII. of 1891, s. 8.

the purposes aforesaid under this Act to any ship or vessel* built within the dominions of such Native Prince or State, and owned by such Prince or State, or by any of their subjects, provided always that the ships belonging to Native Princes or States, or their subjects, in respect of which passes may be granted under this Act, shall, during the voyage or voyages, or the period for which any such pass shall be granted, be commanded by a subject of Her Majesty for whom the Governor-General in Council has power to legislate.

25. The fees demandable in respect of the granting any certificate or pass under this Act shall be fixed from time to time according to the directions of the Governor-General in Council, but so that the same shall not exceed the amount of fees now payable for registering or granting passes to ships or vessels at the different Presidencies.

26. All ships or vessels registered under this Act shall be deemed to belong to the ports at which they shall be respectively registered. And all ships or vessels being registered, or in respect of which passes may have been granted which are unexpired at the time of passing this Act, shall, for the purpose of being deemed British ships be deemed to belong to the ports at which they may have been registered, or when passes shall have been granted which are unexpired, at which such passes may have been respectively granted. And such ships or vessels built and owned as required by the Statute 3 & 4 Vict., c. 56,† shall continue subject to all the rules in force at the respective Presidencies before the passing of this Act, touching the registering, measurement, granting passes, or other requisitions in respect of the same, and shall not be subject to the provisions of this Act, or any provisions of the statute law, a compliance with which may heretofore have been necessary in order that ships or vessels built and owned as aforesaid might be deemed British ships for the purposes of trade.

27.‡ The expressions, "Local Government," Local Government of "Local Governments of India," and "Government of the Presidency," as used in this Act, shall be deemed to include, and to have always included, every person who is a "Local Government" as defined in section 2, clause (10) of the General Clauses Act, 1868.

PROCLAMATION.

The Governor-General of India in Council hereby declares that all ships and vessels built or to be built within the limits of

* See also the Indian Registration of Ships Act (1841) Amendment Act (XI. of 1850), ss. 2 and 3.

† This Act has been repealed "as to all Her Majesty's Dominion" by a Statute Law Revision Act (No. 2) of 1890 (53 and 54 Vict., c. 51, Schedule, Pt. I.).

‡ S. 27 has been inserted by Act VII. of 1891, s. 9.

the Charter of the East India Company (as those limits are defined by the Statute 3rd & 4th of Queen Victoria, Cap. 56, entitled "An Act further to regulate the trade of ships built and trading within the limits of the East India Company's Charter)," being owned by Her Majesty's subjects for whom the said Governor-General in Council has power to legislate, and belonging, under the provisions of the Act passed by the Governor-General in Council, No. X. of 1841, to any ports in the territories under the Government of the East India Company, shall be deemed to be British ships for all purposes of trade within the said limits, including the Cape of Good Hope, and the territories and dependencies thereof.

THE SCHEDULE.*

CERTIFICATE OF SURVEY.

(See section 8.)

Name of ship.	Port of intended Registry.	Official Number, if there has been any former Registry.

* This Schedule was added by the Indian Registration of Ships Act (1841) Amendment Act, 1891 (VII, of 1891), s. 3.

THE SCHEDULE.—Continued.

CERTIFICATE OF SURVEY.—*Concluded.*

Whether a Sailing or Steam Ship; and, if a Steam Ship, how propelled.	Where Built.	When Built.	Name and address of Builders.

		Feet	Tenths.
Number of Decks...	Length from forepart of stern, under the		
Number of Masts...	bowsprit, to the aftside of the head of the		
Rigged	stern post		
Stern	Main breadth to outside of plank		
Build	Depth in hold from tonnage deck to ceiling		
Galleries	at midships		
Head	Dopth in hold from upper deck to ceiling at		
Frame work	midships, in the case of three decks and		
	upwards		
	Length of engine-room, if any		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).
			Engines.				
			Boilers.				

THE SCHEDULE.—*Concluded.*

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTION ALLOWED.	No. of Tons.
Under Tonnage Deck ...		On account of space required for propelling power ...	
Closed-in spaces above the Tonnage Deck, if any.		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from goods or stores of every kind not being the personal property of the Crew ...	
Space or spaces between Decks ...		These spaces are the following, namely :	
Poop ...			
Forecastle ...			
Round-House ...			
Other closed-in spaces, if any, as follows ...			
Gross Tonnage ...		Cubic metres.	
Deduction, as <i>per contra</i> ...			
Registered Tonnage ...			TOTAL ...

I, the undersigned _____
 having surveyed the abovenamed ship, hereby certify that the above particulars are true.

Dated _____ }
 this _____ day of _____ }
 _____ 18 . } _____
Surveyor.

ACT NO. XII. OF 1841.*

The Bengal Land Revenue Sales Act, 1841.†

PASSED ON THE 19TH JULY 1841.

An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.

1. [*Repeals*].—*Repealed by Act XIV. of 1870.*

* Section 2 of Act XII. of 1841 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, s. 3, in the Santhal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum.

Act XII. of 1841 has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends.—*See Reg. I. of 1886, s. 2.*

† This short title is given by Act I. of 1903.

Interest and penalty abolished.

2.* There shall be no demand of interest or penalty upon any arrear of land-revenue.

ACT NO. XIX. OF 1841.†

The Succession (Property Protection) Act, 1841.

PASSED ON THE 6TH SEPTEMBER 1841.

An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions

1. WHEREAS much inconvenience has been experienced where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property, and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs

* In s. 2, certain words and figures, repealed by Act XVI. of 1874, s. 1, have been omitted,

† This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts.—See Act XV. of 1874, s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely :—

The Taluqs of Bhadrachalam and Rakapilli and the Rama

Country	See <i>Gazette of India</i> ...	1879, Pt. I, p. 630.
Sindh	Ditto ...	1880, Pt. I, p. 672.
West Jalpaiguri	Ditto ...	1881, Pt. I, p. 74.
The District of Hazaribagh ...	Ditto ...	1881, Pt. I, p. 597.
Ditto Lohardaga ...	Ditto ...	1881, Pt. I, p. 508.
Ditto Manbhum ...	Ditto ...	1884, Pt. I, p. 509.
Pargana Dhalbhum in the District of Singhbhum	Ditto ...	1881, Pt. I, p. 510.
The Scheduled portion of the Mirzapur District	Ditto ...	1879, Pt. I, p. 383.
Jaunsar Bawar	Ditto ...	1879, Pt. I, p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ...	1886, Pt. I, p. 48.
The District of Lahaul	Ditto ...	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto ...	1879, Pt. I, p. 771.
Coorg	Ditto ...	1878, Pt. I, p. 747.
The District of Silhat	Ditto ...	1879, Pt. I, p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India*, 4th November 1876, Pt. I, p. 606.

Certain formal words in ss. 2 to 19, which were repealed by Acts XVI. of 1874 and XII. of 1876, have been omitted.

A curator appointed under this Act is not to exercise any authority lawfully belonging to a holder of a certificate under Act XXVII. of 1860 or VII. of 1889, or to an executor or administrator. See Act (VII. of 1889), s. 23 (1).

when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession.

And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit ;

and whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards moveable property ;

and whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste, or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case ;

and whereas it will be very inconvenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by, or on the behalf of, parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit :—

It is hereby enacted that whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

NOTES.

Preamble—The preamble of Act XIX. of 1841 must be read with section 3. S. 3 contemplates an enquiry in two points (1) whether the opposite party has lawful title and (2) whether the applicant is really entitled, whether his application is *bond fide*, and whether he is likely to be materially prejudiced if left to regular suit.—11 C. L. J. 521.

This Act is not limited in its application to cases where dispute arises between persons, each of whom claims title by succession to the entire estate and it covers a case in which the claim relates to the undivided share of the estate left by the deceased.—6 Ind. Cas. 259.

For effect and object of the Act. *vide* 6 W. R. Mis. 53. See also 11 W. R. Cr. 23. See also 9 C. P. L. R. 19 ; 2 N. L. R. 72.

2. It shall be lawful for any agent, relative, or near friend, or Agent, &c., may apply in for the Court of Wards in cases within their behalf of minor, &c. cognizance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the solemn Enquiry made by Judge. declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bonâ fide*.

NOTES.

An informal citation issued by a Judge without a solemn declaration by complainant and without preliminary enquiry under s. 3 of the same Act, is cured by the party complained of appearing and opposing the application on the merits.—6 W. R. Mis. 53. *Vide* also 11 C. L. J. 521 and 12 C. L. J. 8 ; 12 C. W. N. 65 ; 138 P. R. 1906 ; 12 M. 341, for procedure to be adopted, *vide* 37 A. L. J. 1909.

To put the procedure provided by this Act in motion, the title and *bonâ fides* of the applicant must be clear, and it must also be manifest that the party complained against had no lawful title to possession, and that, if the applicant be referred to a regular suit he would be a serious sufferer.—138 P. R. 1906.

In the exercise of his judicial discretion, the Judge is entitled to act upon the affidavit of the applicant, under s. 3 *vide* 6 Ind. Cas. 259. In the case of a purdanashin lady her agent's affidavit is a sufficient declaration.—10 Ind. Cas. 820.

The Judge should give effect to any direction given by the deceased for the disposal of the property without regard to their validity.—23 M. L. J. 537.

4. In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned), and shall deliver possession accordingly—provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

NOTE.

Requirements of s. 3 must be conformed.—10 Mad. 68. See also A. W. N. 1883, 184, ordinarily the Chief Court would not interfere with the order but erroneous order has been passed to cause serious embarrassment and difficulty in future, intervention is right and proper.—10 Ind. Cas. 820; See also 15 Ind. Cas. 504; 46 Ind. Cas. 539.

5. In case it shall further appear upon such application and examination as aforesaid, that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

NOTES.

The conditions subject to which a curator is to be appointed are as follows:—
(1) There must be an application and an examination as directed in s. 3; the Judge must be in a position to say upon such application and examination that danger is to be apprehended of misappropriation or waste of the property before the summary suit can be determined, and (3) the delay in obtaining security from the party in possession or its sufficiency must be likely to expose the party out of possession to considerable risk.—28 Ind. Cas. 248.

The conditions prescribed by ss. 3 and 4 must be shown to exist.—12 Mad. 341.

6. The Judge shall have power to authorize such curator, Powers conferrable on either to take possession of the property curator. generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession: Provided always that it shall be entirely discretionary with the Judge whether he shall allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

NOTE.

The only officers of Government whom Act XX. of 1864 contemplates as guardians of the estate of a minor in their official capacity are the Collector of the district and the public curator, appointed, as such, under Act XIX. of 1841.—4 Bom. 638.

I. C. Act, 1841.—8.

7. The Judge shall exact from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property, and on the annual profits of the real property. All surplus moneys realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit: Provided always that although security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

8. Where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government in all matters regarding the propriety of citing the party in possession of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwani Adalat, and the Court of Sadr Diwani Adalat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate: Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rent; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *prima-facie* right thereto, as upon a summary investigation of the rights and circumstances of the parties interested 'he shall consider that necessity may require, taking, at his discretion security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. The curator shall file monthly accounts in abstract, and at Accounts to be filed by the period of every three months, if his curator. administration last so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

12. The accounts of any such curator as is above described Inspection of accounts, shall be open to the inspection of all parties and right of interested party interested; and it shall be competent for to keep duplicate. any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator. And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever Penalty for default as to he shall be ordered to do so by the Judge, accounts. he shall be liable to a fine not exceeding one thousand rupees for every such default.

13. After the Judge of any district shall have appointed any Bar to appointment of curator such appointment shall preclude second curator for same the Judge of any other district within the property. same Presidency from appointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in Curator of different respect of a portion of the property of the parts of property. deceased, this shall not preclude the appointment within the same Presidency of another curator in respect of the residue or any portion thereof: provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge; and provided further, that if two or more curators be appointed by different Judges for several Power to appoint sole parts of an estate, it shall be lawful for the curator. Sadr Diwani Adalat to make such order as it shall think fit for the appointment of one curator of the whole property.

14. This Act shall not be put in force unless the aforesaid Limitation of time for application to the Judge be made within six application for curator. months of the decease of the proprietor whose property is claimed by right in succession.

NOTES.

Limitation.—Clause 5 of section 1 of Limitation Act XIV of 1859 is applicable.—2 Hay 633=Marshall 573. But see 1 W. R. 341.

A decree passed under this Act is summary order and is therefore subject to s. 22 of the Act.—4 W. R. Mis. 6 It does not bar a regular suit which can be brought within 12 years under cl. 12, s. 1 of the Act.—7 W. R. 199 (F. B.). The words “by right of succession” are chosen to describe the point of view of the Judge and not the point of view of the interested parties.—11 Bom. L. R. 1308.

15. This Act shall not be put in force to contravene any public act of settlement. Neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

Bar to enforcement of Act against public settlement or legal directions by deceased.

16. This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor or other disqualified person whose property shall be subject to the Court of Wards shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

Court of Wards to be made curator in case of minors having property subject to its jurisdiction.

17. Nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

Saving of right to bring regular suit.

NOTE.

The remedy for a party dissatisfied with an order passed under this Act is by regular suit and not by Appeal.—W. R. Sp. Mis. 12, *see* also 9 W. R. P. C. 23.

18. The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

Effect of decision on summary suit.

NOTES.

The Judge's error in drawing the issues gives the High Court no jurisdiction to interfere with an order as to which by s. 18 of this Act, neither appeal nor revision is allowed.—6 W. R. Mis. 53.

Revision is allowed in erroneous order.—65 P. L. R. 1911; *see* also 10 M. 68; 24 M. 364.

19. It shall be lawful for the Governments of the respective Presidencies to appoint public curators for any district or number of districts, And

Appointment of public curators.

the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provision of this Act.

20. [Repealed by Act VIII. of 1855.]

ACT NO. XXIV. OF 1841.*

The Illusory Appointments and Infants' Property Act, 1841.

PASSED ON THE 18TH OCTOBER, 1841.

An Act for the greater uniformity of the Law administered by Her Majesty's Supreme Courts with that administered in England in regard to the undisposed residue of the Effects of Testators; Illusory Appointments; the transfer of the Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons, and other like matters.†

1. [Extension of 11 Geo. IV., and 1 Wm. IV., c. 46].—Repealed by the Repealing Act VIII. of 1868.

2. The Statute 11 George IV. & 1 William IV., Chapter 46, entitled "An Act to alter and amend the Law relating to Illusory Appointments,"‡ and the Statute 11 George IV. & 1 William IV., Chapter 65, entitled "An Act for consolidating and amending the Law relating to property belonging to infants, feme-coverts,

* Certain words in ss. 2, 4, and 5, which were repealed by Act XVI. of 1874, have been omitted.

Act XXIV. of 1841 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts. The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

† The whole Act, except so far as it relates to illusory appointments and infants, and except s. 5, was repealed by Act VIII. of 1868.

‡ 11 GEO. IV. & 1 WILL. IV., CAP. XLVI.

An Act to alter and amend the Law relating to Illusory Appointments.

[16th July 1830.]

"Whereas, by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that none of the objects can be excluded by the donee of the power from a share of such property; And whereas appointments in exercise of such powers, whereby an unsubstantial, illusory, or nominal share of the property affected thereby is appointed to or left unappointed to devolve upon any one or more of the objects thereof, are invalid in equity, although the like appointments are good and binding at law; And whereas considerable inconvenience hath arisen from the rule of equity relative to such appointments, and it is expedient that such appointments should be as valid in equity as at law; Be it therefore enacted, &c., that no appointment which from and after the passing of this Act shall be made in exercise of any power or authority to appoint any property, real or personal,

Preamble.

Illusory appointments shall be valid in equity as well as at law.

idiots, lunatics, and persons of unsound mind," shall be extended to the territories of the East India Company, as far as it is applicable to the same.

amongst several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or nominal share of the property subjected to such power.

2. Provided always, and be it further enacted, that nothing in this Act contained Not to affect any deed which declares the amount of the share; which shall declare the amount of the share or shares from which no object of the power shall be excluded.

3. Provided also, and be it further enacted and declared, that nothing in this Act Nor to give any other force to any appointment than the same would have had. contained shall be construed, deemed, or taken, at law or in equity, to give any other validity, force, or effect, to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power.

II GEO. IV. & I WILL. IV., CAP. LXV. §

An Act for consolidating and amending the Law relating to Property belonging to Infants, Feme-coverts, Idiots, Lunatics, and Persons of unsound Mind.

[23rd July 1830.]

* * * * *

12. And be it further enacted that in all cases where any person being under the age of twenty-one years is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for such person under the age of twenty-one years, or for his or her guardian or other person on his behalf, to apply to the Court of Chancery in England, the Courts of Equity of the Counties Palatine of Chester, Lancaster, and Durham, or the Courts of Great Session of the Principality of Wales respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by the order and direction of the said Courts respectively such infant or his guardian, or any person appointed in the place of such infant by the said Courts respectively, shall and may be enabled from time to time, by deed or deeds, to surrender such lease or leases, and accept and take in the place and for the benefit of such person under the age of twenty-one years one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said Courts shall respectively direct.

* * * * *

14. And be it further enacted, that every sum of money and other consideration Charges attending renewal to be paid by any guardian or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said Courts, and Lord Chancellor, intrusted as aforesaid, respectively, shall direct and determine; and as to leases to be made upon surrenders by feme-coverts, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises, for the benefit of the person who shall advance the same.

3. [*Extension of 11 Geo. IV., and 1 Wm. IV. c. 60.*—*Repealed by the Indian Trustee Act XXVII. of 1868, s. 1.*]

15. And be it further enacted, that every lease to be renewed as aforesaid shall New leases shall be to the operate and be to the same uses and be liable to the same same uses. trusts, charges, incumbrances, dispositions, devises and conditions as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

§ As to the repeal of 11 Geo. IV., and 1 Wm. IV., c. 65, in England, *see* 5 and 6 Wm. IV., c. 17; and 16 and 17 Vict., c. 70, s. 1; and 36 and 37 Vict., c. 91.

16. And be it further enacted, that where any person, being under the age of twenty-one years, might, in pursuance of Infants empowered to grant renewals of leases. covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person persons or for any term or number of years absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof or otherwise, as the Court by such order shall direct.

17. And be it further enacted, that where any person, being an infant under the age of twenty-one years, is or [shall be seized or possessed of or entitled to any land in fee or in tail or to any leasehold land for any absolute interest, and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines, or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, to make such lease of the land of such persons respectively, or any part thereof according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the said Court of Chancery shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained, regard being had to the nature of the lease, shall be reserved upon such lease; and the leases, and covenants and provisions therein shall be settled and approved of by a Master of the said Court, and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named and such counterparts shall be deposited for safe custody in the Master's office until such infant shall attain twenty-one, but with liberty to pr per parties to have the use thereof, if required, in the meantime, for the purpose of enforcing any of the covenants therein contained: provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

* * * * *

25. "And whereas by an Act passed in the first year of the reign of King George the First, intituled *An Act for making more effectual Her late Majesty's gracious intentions for augmenting the Maintenance of the poor Clergy*, it was enacted that the agreements of guardians for, and on behalf of, infants or idiots under their guardianship should be as good and effectual to all intents and purposes, as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements; And whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued: Be it further enacted that so much of the said Act of the first year of the reign of King George the First, as is hereinbefore recited, shall be and the same is hereby repealed.

So much of 1 Geo. I., c. 10, s. 9, as enacts that agreements of guardians shall bind infants, repealed.

4. Section* 11 of the 11 George IV. and 1 William IV., Chapter 47†, entitled "an Act for consolidating and amending the laws for facilitating the payment of debts out of real estates," shall be extended to the territories of the East India Company, as far as it is applicable in the same.

5. This Act shall not be construed to affect any case which Saving of certain cases would not have been governed by English and proceedings. law as administered by Her Majesty's Supreme Courts previous to the passing thereof.‡

26. And be it further enacted, that the guardian of any infant, with the approbation of the Court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for, or on behalf of, such infant which such guardian might have entered into by virtue of the said last recited Act, if the same had not been repealed.

32. And be it further enacted that it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending the said Court, to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money, to be paid to any guardian of such infant, or to any other person according to the discretion of such Court, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

* The figures and word "10 and" were repealed by the Repealing and Amending Act (XII. of 1891),

† 11 GEO. IV. & 1 WILL. IV., CAP. XLVII.

An Act for consolidating and amending the laws for facilitating the payment of debts out of real Estate.

[16th July 1830.]

XI. And be it further enacted, that where any suit hath been or shall be instituted in any Court of Equity, for the payment of any debts of Infants to make conveyances in any person or persons deceased, to which their heir and heirs, devisee or devisees, may be subject or liable, and such Court of Equity shall decree the estates liable to such debts or any of them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled, in every such case such Court shall direct, and, if necessary, compel such infant or infants, to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said Court shall think proper and direct, and every such infant shall make such conveyance accordingly; and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons, being an infant or infants, was or were at the time of executing the same of full age of twenty-one years.

‡ In s. 5 certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

NOTES.

Form of order of conveyance to party interested.—Under Act 24 of 1841 the order for a conveyance to be made to the party beneficially interested will be absolute in the first instance.—*In the matter of White, Foulton, 488.*

Practice as to application under this Act.—The original title deeds of the petitioner should be produced in the Court at the time of making an application under this Act. Petitions under that Act are special petitions and *semble* should be signed by Counsel.—*In the matter of Col. Dunlop, Foulton, 489.*

ACT NO. V. OF 1843.*

The Indian Slavery Act, 1843.

PASSED ON THE 7TH APRIL, 1843.

An Act for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.

1. No public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.

* Short title "The Indian Slavery Act, 1843." See the Indian Short Titles Act (XIV. of 1897).

Act V. of 1843 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma by the Upper Burma Laws Act (XX. of 1886), Sch. II. (Pt. I.)

Santhal Parganas by the Santhal Parganas Laws Regulation (III. of 1886), s. 6.

It has been applied to—

British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890).

Chin Hills as regard Hill-tribes, by the Chain Hills Regulation (V. of 1896), s. 3.

Kachin Hill-tracts as regards Hill-tribes, by the Kachin Hill-tribes Regulation (L. of 1895), s. 3.

It has been declared, under, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
-------	-----	-----	-----	-----------------------------	-----	-----------------------

Aden	Ditto.	...	1879, Pt. I., p. 434.
------	-----	-----	-----	--------	-----	-----------------------

West Jalpaiguri, the Western Dvars, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub division of the Darjiling District	Ditto.	...	1881, Pt. I., p. 74.
--	-----	-----	--------	-----	----------------------

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	Ditto	...	1881, Pt. I., p. 504.
--	-----	-----	-------	-----	-----------------------

The Porahat Estate in the District of Singhbhum	Ditto	...	1897, Pt. I., p. 1059.
---	-----	-----	-------	-----	------------------------

The Scheduled portion of the Mirzapur District	Ditto	...	1879, Pt. I., p. 383.
--	-----	-----	-------	-----	-----------------------

Jaunsar Bawar	Ditto	...	1879, Pt. I., p. 382.
---------------	-----	-----	-------	-----	-----------------------

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan	Ditto	...	1886, Pt. I., p. 48.
---	-----	-----	-------	-----	----------------------

I. C. Act, 1843—9.

NOTES.

This Act has nothing to do with the relation existing between *Gossains* and *Bhuggats* and the services rendered in the performance of rights and ceremonies. —*In re Adiram and Mudhuram*, 3 S. D. A. R. 444. See also 3 S. D. A. R. 176.

Act V. of 1843 prevents the application of *willa* rule of Mahomedan Law, whereby the natural heirs of the emancipated were excluded by the heirs of the emancipator.—3 Bom. 422=6 I. A. 137.

2. No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

Bar to enforcement of rights arising out of alleged property in person as a slave.

3. No person who may have acquired property by his own industry, or by the exercise of any art, calling, or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property, or prevented from taking possession thereof, on the ground that such person, or that the person from whom the property may have been derived, was a slave.

Bar to dispossession of property on ground of owner's slavery.

4. Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

Penal offence against alleged slave.

The District of Lahaul	See <i>Gazette of India</i> ... 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto ... 1879, Pt. I., p. 771.
The District of Silhat	Ditto ... 1879, Pt. I., p. 631.
The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Kachar (excluding the North Kachar Hills) ...	Ditto ... 1878, Pt. I., p. 533.
The Garo Hills, the Khasi and the Jaintia Hills, the Naga Hills, the North Kachar Hills in the Kachar District and the Eastern Dvars in the Goalpara District ...	Ditto ... 1897, Pt. I., p. 299.
It has been extended, under the same Act, to the following Scheduled Districts:—	
The Districts of Kumaon and Garhwal	See <i>Gazette of India</i> ... 1876, Pt. I., p. 606.
The North-Western Provinces Tarai	Ditto ... 1876, Pt. I., p. 595.
Certain formal words in ss. 2, 3, and 4, which were repealed by Act XVI. of 1874, have been omitted.	

ACT NO. VI. OF 1844.*

The Madras Inland Customs Act, 1844.

PASSED ON THE 16TH MARCH, 1844.

An Act for the levy of inland customs-duties within the territories [subject to the Government of Fort Saint George.†]

1 to 5. [*Repeal of all Madras Regulations imposing inland, transit, town duties, and certain sea-customs duties; saving of tolls; duties on imports into, and exports from, Madras ports*].—*Repealed by Act VIII. of 1868.*

6. [*Duties on goods passing by land into or out of foreign European settlements on the line of coast within the Madras Presidency*].—*Repealed by Act XVI. of 1874.*

7. [*Power of Governor-General in Council to declare territories of Native Chiefs to be foreign territory*].—*Repealed by Act XI. of 1869.*

8. § For the levy of duties of customs as above provided on goods exported by land to, or imported by land from, such foreign territories, customs chaukis may be established at such places as may be determined by the said Governor in Council, and every officer at every such chauki shall have power to detain goods passing into or out of any such foreign territory, and to examine and ascertain the quantities and kinds thereof; and such goods shall not be allowed to pass across the frontier-line out of or into the territory of the East India Company, until the owner or person in charge thereof shall produce and deliver a certificate showing that the customs-duty leviable thereupon has been paid in full.

9. It shall be lawful for the said Governor in Council to appoint such officers as he may think fit to receive money on account of customs-duties, and grant certificates of the payment thereof, and [that] such a certificate being delivered to any chauki-officer

* Short title "Land Customs, Madras," See the Indian Short Titles Act (XIV. of 1897).

Act VI. of 1844 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4. So far as regards the Madras Presidency, the unrepealed provisions of this Act, relating to the levy of duties and to dutiable goods, apply to duties levied, and goods liable to duty, under s. 5, cl. (b), of the Indian Tariff Act.—See Act XI. of 1882, s. 8.

† This short title was given by Act XI. of 1901.

‡ In the title certain words, repealed by Act XII. of 1891, Sch. I. have been omitted.

§ Certain formal words, repealed by Act XVI. of 1874, have been omitted in this section, and also in ss. 9 to 15

shall entitle goods to cross the frontier into or out of the East India Company's territories, provided that the goods correspond in description with the specification thereof contained in such certificate and that the certificate show the entire amount

of duty leviable on those goods to have been found not to correspond with certificate, duly paid; and if upon examination the goods brought to any chauki be found not to correspond

with the specification entered in the certificate presented with the same, the difference shall be noted on the face of the certificate; and if the payment of duty certified therein shall not cover the entire amount of duty leviable on the goods as ascertained at such examination the goods shall be detained until a further certificate for the difference shall be produced.

10. The said Governor in Council shall give public notice in the official Gazette of the Presidency of Fort Saint George of the appointment of every

Appointments of officers to be notified.

Officers bound to grant certificates on receipt of proper duty,

officer appointed to receive customs-duties on goods crossing the land-frontier of the said foreign territories, and the officers so appointed shall, on receipt of money tendered as customs-duty, be bound to give to any merchant or other person applying for the same a certificate of payment, and to enter therein the specification of goods, with the values and description thereof, according to the statement furnished by the person so applying, provided only that the proper duty leviable thereupon, according to the descriptions and values stated, be covered by the payment made.

11. No certificate shall be received at any chauki that shall bear date more than thirty days before the date when the goods arrived at the chauki:

Ante-dated certificates not received.

Provided, however, that any person who has taken out a certificate from any authorized receiver of customs-duties shall, at any time within the said

When fresh certificate to be granted.

period of thirty days, on satisfying such receiver that such certificate has not been used, and on delivering up the original, be entitled to receive a renewed certificate, with a fresh date, without further payment of duty.

12. It shall be lawful for the said Governor in Council to prescribe by public notice in the official Gazette of the Presidency of Fort Saint George by what routes goods shall be allowed to pass into or out of any such foreign territory as is described in sections 6 and 7 of this Act;* and after, such notice shall be given, goods which may be brought to any chauki established on other routes or

Notification of routes by which goods may cross frontier.

Goods thereafter brought by other routes liable to detention or confiscation.

* I. e. (1) Foreign European settlements situated on the line of coast within the limits of the Presidency of Fort Saint George, and (2) territory of certain Native Chiefs not subject to the jurisdiction of the Courts and Civil Authorities of that Presidency, and declared, by the Governor in Council by notice in the Gazette, to be foreign territory.

passes than those so prescribed shall, if provided with a certificate, be sent back, and, if not provided with a certificate, shall be detained, and shall be liable to confiscation by the Collector of Customs, unless the person in charge thereof shall be able to satisfy the said Collector that his carrying them by that route was from ignorance or accident.

13. Goods which may be passed, or which an attempt may be made to pass, across any frontier guarded by Goods crossing clandestinely to be confiscated. chaukis, between sunset and sunrise, or in a clandestine manner, shall be seized and confiscated.

14. Any chauki-officer who shall permit goods to pass across the frontier when not covered by a sufficient certificate, or who shall permit goods to pass by any prohibited route, shall be liable, on conviction before the Collector of Customs, to imprisonment for a term not exceeding six months, and to a fine not exceeding five hundred rupees, commutable, if not paid, to imprisonment for a further period of six months.

15. If any chauki-officer shall needlessly and vexatiously injure goods under the pretence of examination, or in the course of his examination, or shall wrongfully detain goods for which there shall be produced a sufficient certificate, such officer shall, on conviction before the Collector of Customs, or before any Magistrate or Joint Magistrate, be liable to imprisonment for a term not exceeding six months, and to fine not exceeding five hundred rupees, commutable, if not paid, to imprisonment for a further period of six months.

16. [*Duty on goods imported by sea from foreign European settlements and certain Native States*].—*Repealed by Act XI. of 1869.*

17 to 41. [*No dutiable goods to be exempted except under special order of Government ; certain provisos ; valuation of goods ; goods to be landed only at gazetted ports ; manifests of cargo ; penalties ; obligation to receive customs-officers on board ; goods landed to be covered by boat-notes ; liability to confiscation in certain cases*].—*Repealed by Act VI. of 1863, s. 2, except so far as they relate to duties leviable on salt and opium.**

42. [*Repeal*].—*Repealed by Act VIII. of 1868.*

43. [*Price of salt in Madras*].—*Repealed by Act XVIII. of 1877.*

44 and 45. [*Power of Governor-General in Council to remit such price ; duty-paid salt may be landed at any port.*].—*Repealed by Act XXIV. of 1869, s. 1.*

* As to these duties, see Act XI. of 1862, Sch. II., Nos. 3 and 4, and Act XII. of 1882.

46 to 68. [*Periods allowed for loading and discharging cargoes—Port-clearances—Duty on re-landed cargoes—Rules regarding coasting and country craft—Transhipped goods—Powers of Collector of Customs—Customs-officers amenable in certain cases to Civil Courts—Penalties—Powers of Governor in Council*].—*Repealed by Act VI. of 1863, s. 2.*

SCHEDULES A AND B.

[*Repealed by Act XIII. of 1871.*

Schedules A, B, and C, were repealed by Act VIII. of 1868; Schedules A and B were again repealed by Act XIII. of 1871.

ACT NO. XIX. OF 1844.*

Abolition of Town-duties, &c., Bombay.

PASSED ON THE 14TH SEPTEMBER, 1844.

An Act for abolishing town-duties and mukats, and all taxes upon trades and professions within the Presidency of Bombay.

It is hereby enacted that from the first day of October 1844

Abolition of town-duties^s all town-duties, kasab, veros, muhtarafas, and taxes. baluteh taxes, and cesses of every kind on trades or professions, under whatsoever name levied within the Presidency of Bombay, and not forming a part of the land-revenue, shall be abolished.

NOTE.

The expression "of every kind" includes the cess on cotton and cotton seeds, and absolutely put an end to the right, if any existed, of the Government or of any private individual of levying the same, 8 Bom. 398. But it does not include the fees at weddings.—*Vide* 3 Bom. 210.

* Act XIX. of 1844 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874).
s. 5.

Short title "Abolition of Town-duties, &c., Bombay." See the Indian Short Titles Act (XIV. of 1897).

ACT NO. I. OF 1846.*

The Legal Practitioners Act, 1846.

PASSED ON THE 7TH JANUARY, 1846.

An Act for amending the Law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.

1—3. [Repealed by the Repealing Act VI. of 1874.]

4.† The office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion, provided that no person shall be admitted a pleader in any of those Courts unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding.

5. Provided that every barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules in force in the said Sadr Courts applicable to pleaders, whether relating to the language in which the Court is to be addressed or to any other matter.

Enactment to cease to have force, except for specified purpose.

6.‡ Section 52, Regulation II., 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act.

7.§ Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be

* Short title "The Legal Practitioners Act, 1846," was given by the Indian Short Titles Act (XIV. of 1897).

Act I. of 1846 has been declared to be in force in the Madras and Bombay Presidencies, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), ss. 4, 5.

It has been declared in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts by the Laws Local Extent Act (XV. of 1874), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the Scheduled District of Sindh.—See *Gazette of India*, Dec. 4, 1880, Part I., p. 672.

It is repealed in places to which the pleaders, Mukhtars and Revenue Agents Act (XX. of 1865) is extended (*see* Act XX. of 1865, s. 3), and in places to which the Legal Practitioners Act (XVIII. of 1879) applies (*see* Act IX. of 1884, s. 9).

† S. 4 has been modified by Act XX. of 1853. Certain formal words in ss. 4 to 13 (both inclusive), which were repealed by Acts XVI. of 1874 and XII. of 1876, have been omitted.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

§ In s. 7, the words quoted have been substituted for the words "the sections of Regulations" by Act XII. of 1891, Sch. I.

paid for their professional services ; and it shall not be necessary

Calculation of pleaders' fees out of costs awarded in regular suit. to specify such agreement in the vakalat-nama ; provided that when costs are awarded to a party in any regular suit, original

or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in "the section of the Regulation"

In other cases. specified in section 6 of this Act, and that when costs are awarded in other cases, the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

8. Private agreements between parties and their pleaders

Enforcement of private agreements. respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.

9.* Persons taking opinions from authorized pleaders shall be

Partial repeal of enactments. at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

10. Whenever a pleader has rendered himself liable to a fine

Power of Sadr Amin to fine pleader. in the Court of a Principal Sadr Amin or Sadr Amin, it shall be competent to such

Principal Sadr Amin or Sadr Amin to impose such fine ; provided that an appeal from all orders imposing such fines shall lie to the Zila or City Judge,

Appeal. whose decision thereon shall be final.

11. The rules applicable to pleaders in the Courts of the Zila

Rules applied. and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsifs' Courts.

12. Whenever a pleader has conducted himself in such a

Power of Munsif to fine pleader. manner in the Court of a Munsif as would have rendered him liable to a fine if he had

so conducted himself in the Court of a Zila or City Judge, it shall be competent to such Munsif to impose such fine ; provided that an appeal from all orders

imposing such fines shall lie to the Zila or City Judge, whose decision thereon shall be final.

13. Nothing in this Act contained shall apply to vakils who

Act not to affect certain vakils. may be employed in the Courts of the Village Munsifs, or before the village or

distract panchayats, or before the Collectors of Zilas, under the provisions of Regulations IV., V., VII., and XII., 1816, of the Madras Code.

* In s. 9, certain words, repealed by Act XII. of 1876, have been omitted.

ACT NO. IX. OF 1847.

The Bengal Alluvion and Diluvion Act, 1847.*

PASSED ON THE 8TH MAY, 1847.

An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Bihar, and Orissa.†

1. It is hereby enacted that such parts of the Regulations of the Bengal Code as establish tribunals and prescribe rules of procedure for investigations regarding the liability to assessment of lands gained from the sea or from rivers by alluvion or dereliction, or regarding the right of Government to the ownership thereof, shall, from the date of the passing of this Act, cease to have effect within the provinces of Bengal, Bihar, and Orissa;‡ and that no measures shall hereafter be taken for the assessment of such lands, or for the assertion of the right of Government to the ownership thereof, except under the provisions of this Act.

NOTE.

Churs.—A review of the legislation anterior to Act IX. of 1847 shows that whilst it was intended to bring under assessment lands not included in the permanent settlement, whether waste or gained by alluvion or dereliction from sea or rivers, yet all such lands as were comprised in permanently settled estates were to be rigorously excluded from further assessment. The effect of this Act was merely to change the mode of assessment in the case of land already liable to be assessed under legislation in force when that Act became law. It was not the object of that Act to bring under liability land re-formed on the site of lands previously lost, within the area of a permanently settled estate, the revenue of which had been paid without abatement since the permanent settlement.—17 Cal. 590=17 I. A. 40. See also 6 C. L. R. 249=7 I. A. 73.

2. The expression "Province of Orissa" in this Act shall be taken to mean only so much of the Province of Orissa as is subject to the Government of Bengal.

3. Within the said provinces it shall be lawful for the Government of Bengal, in all districts or parts of districts of which a revenue-survey may

* This short title was added by Act I. of 1903.

† Act IX. of 1847 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, s. 3, in the Santhal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum, and the Kolhan.

This short title was given by the Indian Short Titles Act (XIV. of 1897).

The Act has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends. See Reg. (L. of 1886), s. 2.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I, have been omitted.

have been or may hereafter be completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey.

4. The approval of the revenue-surveys of districts or parts of districts which may be hereafter surveyed, shall be deemed to have taken place on such day as may be specified as the day of such approval in the *Calcutta Government Gazette*.

5. Whenever, on inspection of any such new map, it shall appear to the local Revenue-authorities that land has been washed away from or lost to any estate paying revenue directly to Government, they shall, without loss of time, make a deduction from the *sadr jama* of the said estate equal to so much of the whole *sadr jama* of the estate as bears to the whole the same proportion as the *mufassal jama* of the land lost bears to the *mufassal jama* of the whole estate; but if the *mufassal jama* of the whole estate or of the land lost cannot be ascertained to the satisfaction of the local Revenue-authorities, then the said local Revenue-authorities shall make a deduction from the *sadr jama* of the estate equal to so much of the whole *sadr jama* of the estate as bears to the whole the same proportion as the land lost bears to the whole estate. And this deduction, with the reasons thereof, shall be forthwith reported by the local Revenue-authorities for the information and orders of the *Sadr Board of Revenue*, whose orders thereupon shall be final.

6. Whenever, on inspection of any such new map, it shall appear to the local Revenue-authorities that land has been added to any estate paying revenue directly to Government, they shall, without delay, assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the *Sadr Board of Revenue*, whose orders thereupon shall be final.

NOTE.

The effect of the words "whose order thereupon shall be final" in Act IX. of 1847 s. 6 is that where an assessment has been made under s. 6, which has been approved by the Board of Revenue, such assessment is final and cannot be called in question in a civil suit; but the fact of an assessment having been made is no bar to a suit raising the question whether the Board of Revenue had jurisdiction under s. 6 of the Act to assess. Act IX. of 1847 applies to land re-formed on the site of a permanently settled estate—11 Cal. 784. But see I. L. R., 14 Cal. 67 (F.B.) where an inspection of a survey map, and after its comparison with a former *thak* map, the Board of Revenue assessed certain land as alluvial increments which, however, the Civil Court in a suit against the order of the Board,

found upon further evidence to be a reformation on the original site of a permanently settled estate, in respect whereof the plaintiff had all along paid revenue without abatement: *Held* that the land was not liable to fresh assessment, under the provisions of Act IX. of 1847, s. 6, nor was the comparison of the two maps by the Revenue Officer conclusive on the question of addition to the estate. *Held* also that the language of s. 9 was not such as to prohibit the present suit.

7. [*Power of Local Revenue-authorities to take possession of a new land*] — *Repealed by Bengal Act IV. of 1868.*

8. [*Exception of certain suits from operation of Act*] — *Repealed by Act XIV. of 1870.*

9. Except as regards the proprietary right to islands, no suit or
 Indemnity-clause. action in any Court of Justice shall lie
 on account of anything done in good faith in the exercise of the
 powers conferred by this Act. against the Government or any of its officers

ACT NO. XV. OF 1848.

The Supreme Courts' Officers Trading Act, 1848*

PASSED ON THE 17TH JUNE, 1848.

An Act to forbid trading by the Officers of the Supreme Courts.

FOR the better discharge of their duties by the officers of the
 undermentioned Courts of Justice;† It is
 Preamble. enacted as follows:—

1. No officer of any of the Courts of Judicature established by
 Prohibition in case of Royal Charter within the territories subject to
 officers of Supreme Courts, the Government of the East India Company,
 against or of any Court established for the relief of
 insolvent debtors within the said territories, shall, directly or
 accepting gifts; indirectly, by himself, or by any other
 any person or persons any gift or reward for any act or behaviour
 in his office other than his legal salary and fees and profits of office,
 holding certain offices; or hold any office in any bank or public
 carrying on dealings. company, except as hereinafter excepted, or
 carry on or be concerned in any dealings as a banker or trader, or
 as agent, factor, or broker, either for his own advantage or for the
 advantage of any other person or persons, except such dealings as
 it may be part of the duty of any such officer by virtue of his office
 to carry on.

2. This Act shall not be construed to forbid any officer of any
 Exemption of officers who of the said Courts, who is also a practising
 are also advocates, &c. advocate, attorney, solicitor, or proctor in

* This short title was given by the Indian Short Titles Act (XIV. of 1897).

† See 24 & 25 Vict., c. 104, s. 11.

any of the said Courts, from taking the usual fees and emoluments of advocates, attorneys, solicitors, or proctors, nor to apply to any advocate, attorney, solicitor, proctor, sheriff, assignee, receiver, or committee, so far as he is held to be in that capacity merely for some purposes an officer of any of the said Courts,

3. This Act shall not be construed to forbid any officer of any Holding unpaid office in of the said Courts from holding any unpaid society, office in any society for charitable purposes, or for the advancement of knowledge, or for the encouragement of science, art, or manufactures.

4. Every officer of any of the said Courts who shall knowingly Punishment for contra- offend against this Act shall, on conviction of Act, thereof, be liable to be punished by deprivation of his office, and also, by the sentence of the Court before which he shall be convicted, may be declared incapable, and in that case shall become incapable, of being appointed to the same or any other office of the same Court, or to serve Her Majesty* in the territories under the Government,* or in such part of the said territories as shall be specified in the sentence, or in the discretion of the Court may be otherwise punished by fine or fine and imprisonment for his misdemeanour as to the Court shall seem fit, regard being had to the nature of his offence.

ACT NO. XX. OF 1848.†

The Bengal Landholders' Attendance Act, 1848.‡

PASSED ON THE 23RD SEPTEMBER, 1848.

An Act for better enforcing the attendance of proprietors and farmers of land before Collectors of Land-revenue in the Lower Provinces of the Bengal Presidency.

WHEREAS, by sundry Regulations of the Bengal Code, provision is made for the imposition of a daily fine by the Board of Revenue or other authority exercising the powers of that Board on any proprietor or farmer of land subject to the provisions contained in the said several Regulations, who, when duly summoned by the Collector or other officer exercising the powers of Collector, shall omit or

Preamble.

* Certain words, repealed by Act XII. of 1876, have here been omitted.
† Act XX. of 1848 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874) s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santhal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum and the Kolhan.

The Act has been repealed in the territories to which the Assam Land and Revenue Regulation extends.—See Reg. I. of 1886, s. 2.

‡ This short title has been given by Act I. of 1903.

refuse to attend, or to cause his officer or agent to attend, or to furnish the accounts or documents required, and shall not show sufficient cause for such omission; and it is further provided that the fine when confirmed by Government, is to be levied by the same process as is prescribed for the recovery of arrears of revenue; and whereas in many cases, by the delay thus occasioned, the whole burden of the penalty is greatly increased beyond what would be necessary if summary power were given to the officer by whom the requisition is made to impose and levy reasonable fines, subject to review by the Commissioner of Revenue and other superior Authority; It is enacted as follows:—

1. If any proprietor or farmer of land shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector, in any case specified in any of the said Regulations, by the time prescribed in the notice issued by the Collector, or shall omit or refuse to furnish the accounts or documents required, and shall not show sufficient cause for such omission, the Collector may impose, of his own authority, such daily fine, to be payable daily until compliance with the requisition, as he may think adequate to the situation and circumstances in life of the defaulter, not exceeding in any case the daily fine of fifty rupees: and the amount of such fine, accruing due from time to time, may be levied without further confirmation by the same process as is prescribed for the recovery of arrears of revenue.

2. The Collector shall forthwith report the imposition of every such fine, and the amount thereof, and also from time to time the amount levied, to the Commissioner of Revenue, who shall report the same for the information of the Local Government.

3. Every order passed by a Collector under this Act shall be appealable in the usual manner to the Commissioner of Revenue and other superior Authority, but no such appeal shall avail to prevent the levy of any fine so imposed pending the appeal.

4. Whenever the amount levied under any such order, issued for any default by authority of a Collector under this Act, shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of Revenue; and no further levy for such default shall be made otherwise than by authority of the Commissioner of Revenue.

5. Nothing in this Act contained shall be deemed to repeal the power of imposing daily fines and of levying the fines so imposed in the manner prescribed by the said several Regulations,

6. The word "Collector" used in this Act shall be taken to mean any person lawfully exercising the powers of a Collector.

Extent of Act.

7. This Act shall not extend to the North-West Provinces of the Presidency of Bengal.

ACT NO. X. OF 1849.*

The Madras Revenue Commissioners Act, 1849.†

PASSED ON THE 26TH MAY, 1849.

An Act for appointing a Commissioner of Revenue at Madras.

WHEREAS it is expedient that the Governor of Fort St. George in Council should be empowered to depute a Member of the Board of Revenue to perform in any of the districts of that Presidency all or any of the duties which, by the general regulations and laws of the Presidency, belong to the Board of Revenue collectively; It is enacted as follows :—

1. The Governor of Fort St. George in Council may, from time to time, whenever he shall see fit, depute a Member of the Board of Revenue to perform alone, in any of the districts of that Presidency, all or any of the duties which, by the general regulations and laws of the Presidency, belong to the Board of Revenue collectively.

2. When a special commission shall be given to a Member of the Board of Revenue under this Act, the Member of the Board named therein shall, by virtue thereof, be empowered to exercise, within the limits of his commission, all the powers and duties which by law are vested in the Board of Revenue collectively, without exception, or subject to any exceptions or restrictions which shall be prescribed in such commission; and all Regulations and Acts concerning the Board of Revenue shall be deemed to apply to the said Commissioner within the limits of his commission, and with regard to all things concerning the revenues of the district included in it, so far as is necessary to give full effect to his commission and to this Act.

* Act X. of 1849 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874),

§. 4. The short title was given by the Indian Short Titles Act (XIV. of 1897).

† This short title was given by Act XI. of 1901.

3. Every such commission shall be published in the *Fort St. George Gazette*, and the Commissioner shall enter on his office from the date of such publication ; and in like manner the revocation or other determination of any such commission shall be published in the *Fort St. George Gazette*.

4. The correspondence and other documents belonging to any such commission shall be deposited, on the determination thereof, in the office of the Board of Revenue, and shall be deemed records of the said Board.

ACT NO. V. OF 1850.*

The Indian Coasting Trade Act, 1850.

PASSED ON THE 8TH MARCH, 1850.

An Act for freedom of the Coasting Trade of India.

WHEREAS by an Act of Parliament passed in the thirteenth year of the reign of Her Majesty, intituled "An Act to amend the laws in force for the encouragement of British Shipping and Navigation," it is enacted, with regard to the Coasting Trade of India, that it shall be lawful for the Governor-General of India in Council to make any regulations authorizing or permitting the conveyance of goods or passengers from one part of the possessions of the East India Company to another part thereof, in other than British ships, subject to such restrictions or regulations as he may think necessary ; It is enacted as follows :—

1. Goods and passengers may be conveyed from one part of the territories under the government of the East India Company to another part thereof, in other than British ships, without any restriction, other than is or shall be equally imposed on British ships, for securing payment of duties of customs or otherwise.

* Act V. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

The short title was given by the Indian Short Titles Act (XIV. of 1897).

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	...	...	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 67a.
Aden	...	...	...	Ditto	...	1879, Pt. I., p. 434.
The District of Silhat	...	...	...	Ditto	...	1879, Pt. I., p. 631.

ACT NO. XI. OF 1850.*

The Indian Registration of Ships Act (1841) Amendment Act, 1850.

PASSED ON THE 15TH MARCH, 1850.

An Act to amend Act X., 1841.

Preamble. FOR amendment of Act X., 1841; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

2. The passes which, under section 24 of the said Act, may be issued for conferring the privileges and advantages of a British ship, in certain cases, to any ship or vessel built within the dominions of a Native Prince or State in subordinate alliance with, or having subsidiary treaties with the East India Company, may, after the passing of this Act, be issued in the like cases, and under the same restrictions, to any ship or vessel belonging to any such Native Prince or State, or their subjects wherever the same may have been built.

3. All ships or vessels of whatever rig and of whatever tonnage, owned by British subjects, entitled to registry under Act X., 1841, or owned by such Native Princes or States, or by their subjects entitled to passes under Act X., 1841, as amended by this Act, employed only in coasting voyages, or between any port of the continent of India and the island of Ceylon, may be registered and obtain passes, and the tonnage may be marked, according to such rules as shall be made from time to time by the Governor or Governor in Council of each Presidency.

Fees for certificates of registry of such vessels.

4. The owners of coasting vessels, registered under section 3 of this Act, shall pay for each certificate of registry.

For a vessel not exceeding the burthen of four tons, one rupee,

Exceeding four tons, and not exceeding twenty tons, five rupees,

* Act XI. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
Aden	...	Ditto	...	1879, Pt. I., p. 434.
The District of Silhat	...	Ditto	...	1879, Pt. I., p. 631.

It has been declared in force—

in Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3;

in Upper Burma (except the Shan States), by Act (XIII. of 1898), s. 4.

Exceeding twenty tons, and not exceeding eighty tons, seven rupees,

Exceeding eighty tons, for each ton two annas,

Which fees shall be carried to the credit of the Government of the Presidency in which they are levied.

Construction.

5. This Act shall be construed with and as part of Act X., 1841.

ACT NO. XII. OF 1850.*

The Public Accountants' Defaults Act, 1850.

PASSED ON THE 22ND MARCH, 1850.

For avoiding loss by the default of Public Accountants.

Preamble.

FOR better avoidance of loss through the default of public accountants; It is enacted as follows:—

1. Every public accountant shall give security for the due discharge of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office.

* Act XII. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

The short title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared in force—

in the Santhal Parganas, by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3;

in Upper Burma (except the Shan States), by Act (XIII. of 1898), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Thar and Parkar and the Upper Sindh Frontier ... See *Gazette of India* ... 1880, Pt. I., p. 672.

West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District... Ditto ... 1881, Pt. I., p. 74.

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum ... Ditto ... 1881, Pt. I., p. 504.

Kumaon and Garhwal ... Ditto ... 1876, Pt. I., p. 605.

The Scheduled portion of the Mirzapur District ... Ditto ... 1879, Pt. I., p. 383.

Jaunsar Bawar ... Ditto ... 1879, Pt. I., p. 382.

The Scheduled Districts of the Central Provinces ... Ditto ... 1879, Pt. I., p. 771.

It has been extended, under the same Act, to the following Scheduled Districts:—

The North-Western Provinces Tarai See *Gazette of India* ... 1876, Pt. I., p. 505.

The Scheduled Districts of the Panjab ... Ditto ... 1883, Pt. I., p. 505.

Ajmere and Merwara ... Ditto ... 1878, Pt. I., p. 380.

As to the partial repeal of the Act in the Bombay Presidency, see Bombay Act (V. of 1879), s. 2 and Sch. A. As to its repeal in Assam, see Reg. (I. of 1886).

I. C. Act, 1850.—11.

2. In default of any Act having special reference to the office of any public accountant, the security given by him shall be of such amount and kind, real and personal, or both, and with such sureties (regard being had to the nature of the office), as shall be required by any rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office, subject to the approval of the Governor or Governor in Council of the Presidency or place.

3. Every person is a public accountant within the meaning of this Act, who, by reason of any office held by him in the service of the East India Company, is entrusted with the receipt, custody, or control of any moneys or securities for money, or the management of any lands belonging to the East India Company, or as Official Assignee or Trustee, or as sarbarahkar or in any other official capacity, with the receipt, custody, or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons.*

4. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts as if the amount thereof were an arrear of land-revenue due to Government.

NOTE.

Revision.—The High Court has no jurisdiction, under s. 115 of the Civil Procedure Code of 1908 to interfere with an order passed by a District Judge under s. 4 of the Public Accountants' Defaults Act,—19 Bom. L. R. 926=43 Ind. Cas. 465.

5. All Regulations and Acts now or hereafter to be in force for the recovery or arrears of land-revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrear, shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountant.

* See Bengal Act IV. of 1870, s. 42.

ACT NO. XVIII. of 1850.*

The Judicial Officers' Protection Act, 1850.

PASSED ON THE 4TH APRIL, 1850.

An Act for the protection of Judicial Officers.

Preamble.

FOR the greater protection of Magistrates and others acting judicially; It is enacted as follows :—

* Act XVIII. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force—

in Upper Burma generally (except the Shan States) by the Burma Laws Act (XIII. of 1898);

in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3;

in the Arakan Hills District by Reg. (IX. of 1874), s. 3;

in British Baluchistan by Reg. (I. of 1890), s. 3;

in the Santhal Parganas by Reg. (III. of 1872) s. 3, as amended by Reg. (III. of 1899); and

in the Chittagong Hill-tracts, by Reg. (I. of 1900), s. 4.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Taluqs of Bhadrachalam, Rakapilli, and the Rampa Country ... See *Gazette of India* ... 1879, Pt. I., p. 630.

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum ... Ditto ... 1881, Pt. I., p. 504.

Sindh ... Ditto ... 1878, Pt. I., p. 482.

West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub division of the Darjiling District ... Ditto ... 1881, Pt. I., p. 74.

Kumaon and Garhwal ... Ditto ... 1876, Pt. I., p. 605.

The scheduled portion of the Mirzapur District... Ditto ... 1879, Pt. I., p. 383.

Jaunsar Bawar ... Ditto ... 1879, Pt. I., p. 382.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ... Ditto ... 1886, Pt. I., p. 48.

The District of Lahaul ... Ditto ... 1886, Pt. I., p. 301.

The Scheduled Districts of the Central Provinces ... Ditto ... 1879, Pt. I., p. 771.

Coorg ... Ditto ... 1879, Pt. I., p. 747.

The District of Silhat ... Ditto ... 1879, Pt. I., p. 631.

The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars) and Kachar (excluding the North Kachar Hills) ... Ditto ... 1878, Pt. I., p. 533.

The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvars in the Goalpara District ... Ditto ... 1897, Pt. I., p. 299.

The Porabhat Estate in the Singhbhum District ... Ditto ... 1897, Pt. I., p. 1059.

1. No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty,† whether or not within the limits of his jurisdiction: provided that he at the time, in good faith,‡ believed himself to have jurisdiction to do or order the Act complained of: and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.§

NOTES.

A Judge is privileged in respect of any words, relevant to the issue, uttered by him, while acting judicially, in a case within his jurisdiction, although such words convey an imputation upon a person not judicially before him. *Semble*.—To maintain an action of slander, the irrelevancy must be so gross as to afford no room for the hypothesis of honest mistake.

A Judge of a Zilla Court, has the same immunity in his office as a Judge of the Superior Courts in England.

The English letters which a Sessions Judge is directed to forward to the Nizamut Adawlut are judicial proceedings, and are entitled to the same privilege as a judgment delivered in open Court.

Evidence which might be good in support of a plea of justification, may, in the absence of such a plea, be admissible, if it tends to prove *bona fides* in writing a privileged communication, and to rebut malice where the allegation of malice is traversed.—*Ally Kiram v. Sandys*, 1 Boulnois 1.

Under Act XVIII. of 1850, where an act done or ordered to be done by a judicial officer in the discharge of his judicial duties is within the limits of his jurisdiction he is protected whether or not he has discharged those duties erroneously, irregularly, or even illegally, or without believing in good faith or that he had jurisdiction to do the act complained of. Where the act done or ordered to be done in the discharge of judicial duties is without the limits of the officer's jurisdiction he is protected if, at the time of doing or ordering it, he in good faith believed himself to have jurisdiction to do or order it.—I. L. R., 12 All. 115. See also 1 A. 280.

It has been extended, under the same Act, to the following Scheduled Districts:—
The North-Western Provinces and Merwara See *Gazette of India* ... 1876, Pt. I, p. 505.
Ajmere and Merwara ... Ditto ... 1879, Pt. I, p. 380.

It has been extended to the Shan States generally by the Second Schedule to the Shan States Laws and Criminal Justice Order, 1895 See *Burma Gazette* ... 1895, Pt. I., p. 262.

It has been applied to the Chin Hills, as regards the hill-tribes, by the Chin Hills Regulation (V. of 1896), s. 3; and to the Baluchistan Agency Territories by the Baluchistan Agency Laws Law, 1890, s. 4 (1).

† 3 Bom. A. C. J. 37.

‡ See 1 Tayl. & Bell 228n.; 6 Mad. 439; 3 Bom. A. C. J. 46; 4 Ben. A. C. J. 37.

§ As to procedure for instituting criminal proceedings against Judges and public servants.—See Criminal Procedure Code (Act V. of 1898), s. 197.

The word jurisdiction is used here in the sense in which it was used by the Privy Council in *Calder v. Hullett*. It means authority and power to act in a matter and not authority or power to do an act in a particular form or manner.—*Ibid.* But where the belief is not *bona fide* he is not protected.—1 M. 89.

But where a person did not proceed under certain Act under which he was entitled to proceed and which would have justified him in doing certain act if he had proceeded under that Act he is not protected from liability in respect of the above acts by Act XVIII. of 1850.—1 L. R., 9 Cal. 341=9 L. A. 152.

The meaning of s. 23 of the Public Demands Recovery Act VII. of 1880 (Bengal) which lays down that a Collector "in the discharge of his functions shall be deemed to be a person acting judicially within the meaning of Act XVIII. of 1850" is, that for the purpose of protecting him from personal liability his action is to be regarded as judicial.—13 Cal. 208.

The conduct of a malicious Judge can be investigated and due punishment can be awarded.—7 Bom. L. R. 951; See also 9 C. W. N. 495=1 C. L. J. 355; 3 B. H. C. App. 1. The mere absence of *malafides* is no defence.—13 W. R. 13; 16 W. R. 63. A Magistrate is not protected when he failed to act reasonably, carefully and circumspectly.—3 B. H. A. C. 36; when he acts without jurisdiction believing he has jurisdiction he is protected.—16 M. L. J. 232, see also L. B. R. (1872-1892) 83; 11 W. R. Cr. 19; 8 C. L. J. 75; 30 B. 241; 59 P. W. R. 1908; 9 Ind. Cas. 535.

The duties of a Magistrate in this country are at once executive and judicial. If a search is conducted by a Magistrate in his executive capacity he cannot rely on Act XVIII. of 1850 as a protection from the consequence of holding a search.—36 C. 433=13 C. W. N. 458. Where a Magistrate acting in his judicial capacity, takes in good faith all the proceedings which the law permits him to take, he is protected.—9 Ind. Cas. 535.

A Magistrate who makes a personal search of a house in view of an enquiry under the Criminal Procedure Code Acts in the discharge of his judicial functions and may therefore claim the protection of Act XVIII. of 1850—39 C. 453 (P. C.). See also 39 A. 516.

ACT NO. XIX. OF 1850.*

The Apprentices Act, 1850.

PASSED ON THE 11TH APRIL, 1850.

Concerning the binding of Apprentices.

FOR better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts, and employments, by which, when they come to full age, they may gain a livelihood; It is enacted as follows:—

* Act XIX. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force—

in Arakan Hill District, by Reg. (IX. of 1874), s. 3;

in Upper Burma (except the Shan States), by Act (XIII. of 1898), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh " " " " See Gazette of India ... 1889, Pt. I., p. 672.

1. Any child, above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft, or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage.

2. The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

3. Any Magistrate or Justice of the Peace may act with all the powers of a guardian under this Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him or any other Magistrate of vagrancy, or the commission of any petty offence.

4. Any orphan or poor child, brought up by any public charity, may be bound apprentice by the governors, directors, or managers thereof, as his or her guardians for this purpose.

West Jalpaiguri, the Western Dvars, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District ...	See <i>Gazette of India</i> ...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum ...	Ditto	... 1881, Pt. I., p. 504.
The scheduled portion of the Mizapur District ...	Ditto	... 1879, Pt. I., p. 383.
Jaunsar Bawar ...	Ditto	... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	Ditto	... 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces ...	Ditto	... 1879, Pt. I., p. 771.
The District of Sikkim ...	Ditto	... 1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills) ...	Ditto	... 1897, Pt. I., p. 299.
It has been extended, under the same Act, to the following Scheduled Districts:—		
Kumaon and Garhwal ...	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
The North-Western Provinces Tarai ...	Ditto	... 1876, Pt. I., p. 505.
It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See <i>Gazette of India</i> , 1886, Pt. I., p. 301.		
Instruments of apprenticeship executed by a Magistrate under this Act, or by which a person is apprenticed by or at the charge of a public charity, are exempted from stamp-duty.—See Act I. of 1879, Sch. II., No. 12, cl. (c).		

5. Any such boy may be bound as an apprentice in the sea-service. Apprenticing of such boy being the owner of any registered ship belonging to and trading from any port in the territories under the Government of India, which has been declared to be a registering port under Act X., 1841, to be employed in any such ship, the property of such person commanded by a British subject, and, while so employed, to be taught the craft and duty of a seaman.*

6. [*Apprenticing of such boy in ship of the East India Company*].—*Repealed by the Repealing Act (XIV. of 1870).*

7. The master or commander of any ship in which an apprentice bound to the sea-service shall be appointed to serve by the party to whom he is bound, shall be deemed the agent of such party for the purpose of this Act.

8. Every contract of apprenticeship shall be in writing, according to the form given in the Schedule Form and contents of contract of apprenticeship. A annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person Signatures to contract. by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but, when the apprentice is bound by the governors, directors, or managers of a public charity, the signature of two of them, or of their secretary or officer, shall be sufficient on behalf of the persons binding the apprentice.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been executed as prescribed, and deposited. deposited in the office of the Chief Magistrate of the place or district where it has been executed, or, if the apprentice is bound to the sea-service, in the office of the person appointed, under Act X., 1841, to make registry of ships at the port where he is to begin his service; and the person in whose office any such contract is deposited shall give Copies to be given to to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the Magistrate or registering officer.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice, if he is above the age of fourteen years : provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to section 9* of this Act ; and the Magistrate or registering officer shall thereupon make under his hand corresponding endorsements on the office-copies, which shall be brought to him at the same time for that purpose.

12. The master of any apprentice bound under this Act may, with the consent of the person by whom the apprentice is assigned to new master, he was bound, and with the consent of the apprentice if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof : provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively : and every such assignment shall be certified on the office-copies of the contract under the hand of the Magistrate or registering officer according to the form given in Schedule B annexed to this Act.

13. Upon complaint made to any Magistrate in the said territories,† by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint ; and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint ;

and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice not exceeding four times the amount of the premium paid upon the binding or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees ;

* The figure 9 has been substituted for the figure 8 by Act XII. of 1891, Sch. II.

† See s. 5.

and if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and if the offender shall not be the master, but his agent, by distress and sale of the goods and chattels of the master also.

14. No contract of apprenticeship shall be cancelled, nor shall
Power of master or his agent to chastise apprentice. any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour, given to any apprentice by his master or the agent of his master, as may lawfully be given by a father to his child; and the provision for enabling the contract
Liability of master or agent for assault, &c. of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

15. Upon complaint made to any Magistrate by or on behalf
Power of Magistrate in case of complaint by master against apprentice. of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place, not being a criminal gaol, for any time not exceeding one month, of which one week may be in solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped: or, if the offender be a girl, or in the case of any boy the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house or on board the vessel to which he belongs, upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

16. Upon complaint of wilful and repeated ill-behaviour on
Cancelment of contract for misconduct of apprentice. the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled, whether or not the charge is proved; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved; and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as to the Magistrate seems fit on consideration of the case; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act, unless it be brought within one month after the cause of complaint arose; or, if the cause of complaint arose on board-ship during a voyage, within one month after the arrival thereof at a port or place in the said territories; and no Magistrate shall entertain a complaint on the part of an apprentice of apprentice against his master or the agent of his master under this Act, unless it be brought within three months after the cause of complaint arose; or, if the cause of complaint arose on board-ship during a voyage, within three months after the arrival thereof at a port or place in the said territories.

19. If the master of a ny apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term, of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the executors or administrators out of the estate of the deceased to the person or persons who shall have paid the same; unless the executors or administrators of the deceased master shall continue the business in which such apprentice shall have been employed, and shall within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the executors or administrators on the original contract of apprenticeship; and also on the office-copies thereof, by the Magistrate or registering-officer; and the apprentice shall be bound to the executors or administrators so keeping him for the remaining term of his apprenticeship.

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance for three months from and after the death of his master, out of the assets left by him; provided that

* The word "or" has been substituted for the word "and" by Act XII. of 1891, Sch. II.

during such three months such apprentice shall continue to live with, and serve as an apprentice, the executors or administrators of such master, or such person as they shall appoint.

22. The apprentice of any person against whom a commission of bankruptcy shall be issued, or who shall be adjudged to have committed an act of insolvency, during the apprenticeship, shall be discharged from all obligation under the contract of apprenticeship; and, if any premium was paid on binding him as an apprentice, he or the person by whom he was bound, shall be entitled to claim the amount thereof, as a debt against the estate of the bankrupt or insolvent.*

23. For the purposes of this Act, all British subjects, wherever of whatever parents born, as well as other persons in the territories under the Government of India, without the towns of Calcutta and Madras and the town and island of Bombay, shall be amenable to the jurisdiction of the Courts and Magistrates of India.

24. An appeal shall lie from any order passed by any Magistrate without the said towns and island to the Court of Session to which such Magistrate is subordinate: provided the appeal is made within one month from the date of the order.

25. In this Act the words "master," "owner," "person," and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

SCHEDULE A.

FORM OF AGREEMENT.

This Agreement made the _____ day of _____ in the year _____ between *A. B.*, of _____, and *C. D.*, of _____, witnesseth that the said *A. B.* doth this day bind *E. F.*, a boy (or girl) of the age of _____ years completed, son (or daughter) of the said *A. B.* (or otherwise describing the relation in which *A. B.* and *E. F.* stand), to dwell with and serve the said *C. D.*, as an apprentice, from this day forth for _____ years (in the case of a girl add, or until the time of her marriage, which shall first happen), during all which term the said apprentice shall duly and faithfully serve the said *C. D.* according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself), honestly, orderly, and obediently, in all things toward the said *C. D.* and his (or her) family. And the said *C. D.* for himself (or herself) and his (or her) executors and administrators, in

* Compare 12 & 13 Vict., c. 106, s. 170.

consideration (of the premium or sum of paid by the said *A. B.*, to the said *C. D.*, the receipt whereof the said *C. D.* hereby acknowledges, and) of the faithful service of the said *E. F.*, doth covenant and agree with the said *A. B.*, his (or her) executors and administrators, that he (or she) will teach or cause to be taught to the said *E. F.*, in the best way and manner that he (or she) can, the trade (craft or employment) of a during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome, and sufficient food, clothes, lodging, washing, and all other things necessary, fit, and reasonable for an apprentice: (and further, *here insert any special covenants*).

In witness whereof the parties have hereunto set their hands and seals, the day and year above written.

A. B.

L. S.

C. D.

L. S.

SCHEDULE B.

FORM OF ORDER OF ASSIGNMENT.

(To be endorsed on the Agreement.)

Be it known to all men that on the day of in the year personally appeared before *G. H.*, Magistrate of , *C. D.*, of , with *E. F.*, his (or her) apprentice, and *J. K.*, of , and desired that the agreement of apprenticeship, whereby the said *E. F.*, was bound to the said *C. D.*, might be assigned and made over to the said *J. K.*, and the said *G. H.*, having satisfied himself, by personal examination of the said *E. F.*, and by other lawful ways and means, that such assignment is for the benefit of the said *E. F.*, and is made with the consent of (the said *E. F.*, and of) all persons whose consent thereunto by law is required, doth allow such assignment: and the contract of apprenticeship, whereby the said *E. F.* was on the day of in the year bound to the said *C. D.*, as an apprentice to learn the trade (craft or employment) of a , shall henceforth endure, unto the end of the said term, as if the said *J. K.* had been originally party to the said deed, and had executed the same in the place and stead of the said *C. D.*, and shall be bound, for himself (or herself) his (or her) executors or administrators to fulfill the covenants by the said *C. D.* to be performed, and the said *E. F.* shall henceforth be bound unto the said *J. K.* in like manner as he (or she) was by the said agreement bound unto the said *C. D.*

If E. F. is not above the age of fourteen years, the words between brackets may be omitted.

C. D.

E. F.

J. K.

In witness whereof the said *C. D.*, *E. F.*, and *J. K.*, have hereunto set their hands before me the day and year above written.

G. H., Magistrate.

ACT NO. XXI. OF 1850.*

The Caste Disabilities Removal Act, 1850

PASSED ON THE 11TH APRIL, 1850.

An Act for extending the principle of section 9, Regulation VII., 1832, of the Bengal Code, throughout the Territories subject to the Government of the East India Company.

WHEREAS it is enacted by section 9, Regulation VII., 1832,† of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion: or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions: the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled;" and whereas it would be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company; It is enacted as follows:—

Preamble.

* Act XXI. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally by the First Part of the Second Schedule to the Upper Burma Laws Act (XX. of 1886); in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3; and in the Arakan Hill District (with modifications), by Reg. (IX. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
West Jalpaiguri	...	Ditto	...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	Ditto	...	1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	...	Ditto	...	1879, Pt. I., p. 383.
Jaunsar Bawar	...	Ditto	...	1879, Pt. I., p. 382.
The Districts of Peshawar, Hazara, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan	...	Ditto	...	1886, Pt. I., p. 48.
The District of Lahaul	...	Ditto	...	1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	...	Ditto	...	1879, Pt. I., p. 771.
Coorg	...	Ditto	...	1878, Pt. I., p. 747.
The District of Silhat	...	Ditto	...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)	...	Ditto	...	1897, Pt. I., p. 299.
The Porabhat Estate in the Singhbhum District	...	Ditto	...	1897, Pt. I., p. 1059.
It has been extended, under the same Act, to the following Scheduled District:—				
Kumaon and Garhwal	...	See <i>Gazette of India</i>	...	1876, Pt. I., p. 606.
The North-Western Provinces Tarai	...	Ditto	...	1876, Pt. I., p. 355.

† Repealed by Act VI. of 1871.

1. So much of any law or usage now in force within the territories subject to the government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste,* shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.†

NOTES.

A Hindu widow's estate is preserved to her by force of this Act notwithstanding forfeiture of it by Hindu Law by reason of her unchastity and consequent loss of caste—*Sarnomoney Dass v. Nemy Charan*, 2 Taylor and Bell 301.

Act XXI. of 1850 does not apply only to a person who has himself or herself renounced his or her religion or been excluded from caste. The latter part of s. 1 protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste. This applies to a case where a person born a Mahomedan, his father having renounced the Hindu religion, claims by right of inheritance under the Hindu law a share in his father's family.—I. L. R. 11 All. 100. See also 23 P. L. R. 1903.

Since this Act came into force, mere loss of caste does not occasion a forfeiture of rights of property.—1 Bom. 559.—See also 1 All. 549. *

Under the Hindu Law, as administered in the Bengal School, a widow who has once inherited the estate of her husband is not liable to forfeit that estate by reason of unchastity. *Quære*. As to the effect of Act XXI. of 1850, if the widow had been degraded or deprived of her caste in consequence of her unchastity 5 C. 776—711. A. 115. As regards the scope.—*Vide* 23 M. 171.—See also 31 B. 495; 2 C. L. J. 97, 31 M. 100; 15 C. W. N. 545; 29 A. 487; 60 P. R. 1901; 1 Ind. Cas. 647.

ACT NO. XXIII. OF 1850.‡

Calcutta Land-revenue Act, 1850.§

PASSED ON THE 8TH JUNE, 1850.

An Act for securing the Land-revenue of Calcutta.

WHEREAS it is expedient that the land-revenue accruing due to the East India Company within Calcutta be ascertained and collected in as summary a manner as in other parts of the territories under the government of the East India Company; It is declared and enacted as follows:—

1. All assessable lands, not the property of the East India Company, within the town of Calcutta, of which the rate of assessment is not known,

* 13 Beng. 25, 75-76.

† 9 Moo. I. A. 239.

‡ As to the power of the Collector of Calcutta to entrust any part of his duties under this Act to his Deputy, see Act XVIII. of 1856, s. 3, *infra*.

§ This title has been given by the Indian Short Titles Act I. of 1903.

or which have not heretofore been assessed, shall be assessed at the rate of three annas for each kattha.

2. Lakhiraj tenures of land in Calcutta, of which uninterrupted possession has been held exempt from assessment for sixty years, shall be valid: no other lakhiraj tenures of land in Calcutta shall be deemed valid, unless the same are or shall be held under an unexpired grant from the British Government.

3. If any owner of land within Calcutta, or any person holding land within Calcutta on lease from the East India Company, shall, upon the written demand of the Collector, refuse or neglect to pay any sum at which the land is assessed, or for which he is liable under his lease, the Collector may levy the same by distress and sale of the goods and chattels, wherever found, of such owner or lessee, or, after written demand upon the tenant or occupier, and his refusal or neglect to pay the sum lawfully demanded, by distress and sale of any goods and chattels found upon the land, in the manner appointed for regulating distress for small rents in Calcutta by "the Presidency Small Cause Courts Act, 1882, Chapter VIII.;"* and, for the purpose of any such distress and sale, the Collector shall have all the powers of "the Judges of the Court of Small Causes at Calcutta;"† and the Collector shall have power to appoint any of his officers to perform the duties of bailiffs and appraisers, and of the chief clerk of the said Court‡ and all the provisions of the said Act relating to "the Judges of the Court of Small causes at Calcutta,"§ and their Court shall be deemed to apply to the said Collector and his office in the execution of this Act.

4. In the case of payment by any tenant or occupier not holding immediately under the East India Company, or the seizure and sale of his property, he may deduct the amount of the payment or levy from the next payment of rent to his landlord.

5. The claim of the East India Company for land-revenue or rent has priority over all other claims upon the land, or to which property distrained upon the land may be liable.

* The words quoted have been substituted for the words, "Act I. of 1875," by the Presidency Small Cause Courts Act (XV. of 1882), s. 3.

† The words quoted have been substituted for the words, "a Commissioner of the Court for recovery of small debts referred to in the said Act," by the Presidency Small Cause Courts Act (XV. of 1882), s. 3.

‡ Here the words, "as provided by the said Act," repealed by the Presidency Small Cause Courts Act (XV. of 1882), s. 3, have been omitted.

§ The words quoted have been substituted for the words, "the said Commissioners," by the Presidency Small Cause Courts Act (XV. of 1882), s. 3.

6. If the Collector's claim for arrears of rent is disputed, the process of distraint and sale shall not be stayed, unless the amount claimed be lodged with the Collector.

Distress not stayed unless amount lodged.

7. Arrears of rent or revenue which shall become due to the East India Company within the town of Calcutta after the passing of this Act, shall be recoverable at any time within six years next after the same are due, or next after an acknowledgment of the same in writing has been given by the person by whom the same is payable or his agent, and not afterwards.

Recovery of arrears

8. When a claim to hold land lakhiraj or free of assessment shall be set up under this Act, the Collector shall inquire into the claim, taking such evidence as the claimant may offer or the public records supply and shall report his proceedings and decision in the case for the consideration of the Revenue Commissioner. If the Commissioner is satisfied of the validity of the claim, he shall make an order accordingly, and such order shall be final. If he is not satisfied of the validity of the claim, he shall direct the Collector to assess the land, leaving the claimant to contest the Collector's demand in the Civil Courts as herein provided.

Inquiry into claims to hold land lakhiraj.

9. Any person obstructing or molesting the Collector or any of his subordinate officers in the execution of their duty, shall, on conviction before a Magistrate of the town of Calcutta, be liable to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the common jail for a term not exceeding six months, or until the fine is sooner paid.

Penalty for obstructing Collector.

10. The Collector may punish any contempt committed in his presence in open kachahri or office, by fine not exceeding two hundred rupees, and, in default of payment, by imprisonment in the common jail for a term not exceeding one month: from every such order, or fine, or imprisonment, an appeal shall lie to the Commissioner, whose decision shall be final.

Power to punish contempts.

11. The Collector shall Act in the execution of this Act under the usual control of the superior Revenue-authorities.

Control of Collector.

12. The ground-rents payable to the East India Company from lands in Calcutta are revenue within the meaning of the Act of Parliament 21 Geo., III, c. 70, and the Supreme Court of Judicature established by Royal Charter at Fort William in Bengal has not any civil jurisdiction concerning the said ground-rents, or concerning anything ordered or done in the assessment or collection thereof.

Bar of jurisdiction of Supreme Court.

13. All actions concerning any trespass or injury committed by any Revenue-officer acting under colour of this Act, or concerning any claim in respect of any goods taken by, or any moneys paid to, any Revenue-officer under this Act, or concerning any claim of rent or revenue on the part of the East India Company under this Act, shall be tried and determined in the Civil Courts established by the East India Company at the sadar station of the Twenty-four Paraganas, notwithstanding that the cause of action in respect of which such action is brought arose, or the defendant therein reside, within the limits of the town of Calcutta: and every such action shall be brought within six months after the cause of action arose, and not afterwards.

Limitation.

14. The words "Collector" and "Commissioner" used in this "Collector," "Commissioner." Act shall be taken to mean any person lawfully appointed to exercise the powers of Collector and Commissioner respectively.

ACT NO. XXV. OF 1850.*

The Forfeited Deposits Act, 1850,

PASSED ON THE 14TH JUNE, 1850.

An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII., 1819.†

WHEREAS patnidars‡ fraudulently avail themselves of the provision in section 9, Regulation VIII., 1819, of the Bengal Code,§ that forfeited deposits at sales of land|| for arrears of rent shall be applied as if they were purchase-money; It is enacted as follows:—

Preamble.

1. [Repealed by Act XIV. of 1870.]

2. Any such forfeited deposit shall be applied to defray the

Application of forfeited expenses of the sale, and the surplus shall be forfeited to Government.

* Act XXV. of 1850 has been declared in force by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1885), s. 2; in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3; and under s. 3 of the Scheduled Districts Act (XIV. of 1874) in the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum, and the Kolhan. It has been repealed, so far as it relates to forfeited deposits of sales of land or any interest in land in execution of decrees, by Act (X. of 1861).

This title has been given by the Indian Short Titles Act (XIV. of 1897).

† Here the words, "and Act IV., 1846," repealed by Act XII. of 1891, Sch. I., have been omitted; Act IV. of 1846 having been repealed by Act XII. of 1873.

‡ Here the words, "and judgment-debtors," repealed by Act XII. of 1891, Sch. I., have been omitted.

§ Here the words, "and in section 5, Act IV., 1846," repealed by Act XII. of 1891, Sch. I., have been omitted.

|| Here the words, "in execution of decrees or," repealed by Act XII. of 1891, Sch. I., have been omitted.

ACT NO. XXXIV. OF 1850.*

The State Prisoners Act, 1850.

PASSED ON THE 23RD AUGUST, 1850.

An Act for the better Custody of State Prisoners.†

WHEREAS doubts have been entertained whether State prisoners confined under Regulation III., 1818, of the Bengal Code, can be lawfully detained in any fortress, gaol, or other place, within the limits of jurisdiction of any of the Supreme Courts of Judicature established by Royal Charter, and it is expedient that such doubts be removed, and the powers of the said Regulation extended to all the territories under the government of the East India Company; It is enacted as follows:—

* Act XXXIV. of 1850 has been declared to be in force in the whole of British India except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874) s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared in force—

in the Arakan Hill District by Reg. (IX. of 1874), s. 3;

in British Baluchistan by Reg. (I. of 1890), s. 3;

in Argul and Khondmals by Reg. (I. of 1894), s. 3;

in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3;

in Upper Burma generally (except the Shan States) by Act (XIII. of 1898), s. 4; and

in the Chittagong Hill-tracts by Reg. (I. of 1900), s. 4.

It has been extended to the Shan States generally by the Second Schedule to the Shan States Laws and Criminal Justice Order.—See *Burma Gazette*, 1895, Pt. I., p. 262.

It has been applied to the Baluchistan Agency Territories by the Baluchistan Agency Laws Law, 1890.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Shakti	See <i>Gazette of India</i> ...	1880, Pt. I, p. 672.
Adan	Ditto ...	1879, Pt. I, p. 434.
West Jalpaiguri and the Western Dvras	Ditto ...	1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kohan in the District of Singhbhum	Ditto ...	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzapur district	Ditto ...	1879, Pt. I, p. 383.
Jaunsar Bawar	Ditto ...	1879, Pt. I, p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ...	1886, Pt. I, p. 48.
The District of Lahaul	Ditto ...	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto ...	1879, Pt. I, p. 771.
The District of Silhat	Ditto ...	1879, Pt. I, p. 631.

1. The warrant of commitment of any State prisoner, under Regulation III., 1818, of the Bengal Code, may be directed to the Sheriff of the gaol of any of the Supreme Courts of Judicature established by Royal Charter in the said territories, or to the commandant of any fortress, or to the officer in charge of any gaol or other place, in which it is deemed expedient that such State prisoner be confined, in any part of the said territories; and such warrant shall be sufficient authority for the detention of such State prisoner in the fortress, gaol, or other place mentioned in the warrant.

2. Regulation III., 1818, of the Bengal Code, shall be extended Regulation III. of 1818 and applied to every Sheriff, commandant, extended. or officer, having any State prisoner in custody, under the said Regulation, as explained and extended by this Act.†

3. [*Confinement of State prisoners legalized*].—*Repealed by the Repealing and Amending Act (XII. of 1891).*

The Districts of Kamrup, Darang, Naugong, Sibsagar, Lakhimpur, Garo Hills, Khasi and Jaintia Hills, Naga Hills, Cachar and Goalpara ...	See <i>Gazette of India</i> ...	1887, Pt. I., p. 78.
The Mokokchang Sub-division of Naga Hill Districts ...	Ditto	... 1891, Pt. I., p. 252.
The Porahat Estate in the Singbhum District ...	Ditto	... 1897, Pt. I., p. 1059.
It has been extended, under the same Act, to the following Scheduled Districts :—		
Kumabon and Garhwal ...	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
Ajmere and Merwara ...	Ditto	... 1878, Pt. I., p. 380.
The Andaman and Nicobar Islands ...	Ditto	... 1882, Pt. I., p. 148.
† See Act III. of 1858, and Act V. of 1871, s. 15. See, too, <i>Re Ameer Khan</i> , 6 Ben. 392.		

‡ Prisoners detained under Act (XXXIV. of 1850) are not affected by s. 491 of the Criminal Procedure Code (Act V. of 1898). See also Act (III. of 1858), *infra*.

ACT NO. XXXVII. OF 1850.*

The Public Servants (Inquiries) Act, 1850.

PASSED ON THE 1ST NOVEMBER, 1850.

For regulating Inquiries into the Behaviour of Public Servants.

WHEREAS it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removeable "from their appointments"† without the sanction of Government, and to make the same uniform throughout the territories under the Government of India ;‡ It is enacted as follows:—

1. [*Repeal of Acts*].—*Repealed by the Repealing Act (XIV. of 1870).*

* Act XXXVII. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3. It has been declared in force—

in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3 ;
in the Arakan Hill Districts by Reg. (IX. of 1874), s. 3, as amended by Act (XIII. of 1898), s. 16 ;
in Upper Burma generally (except the Shan States) by Act (XIII. of 1898), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
West Jalpaiguri	Ditto ...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan, in the District of Singbhum ...	Ditto ...	1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	Ditto ...	1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ...	1879, Pt. I., p. 382.
The Districts of Peshawar, Hazara, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ...	1886, Pt. I., p. 48.
The District of Lahaul	Ditto ...	1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto ...	1879, Pt. I., p. 771.
The District of Silhat	Ditto ...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)	Ditto ...	1897, Pt. I., p. 299.
The Porahat Estate in the Singbhum District	Ditto ...	1897, Pt. I., p. 1059.
It has been extended, under the same Act, to the following Scheduled Districts :—		
Kumaon and Garhwal	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
The North-Western Provinces Tarai	Ditto ...	1876, Pt. I., p. 505.

As to the application of this Act in cases under the Bombay and Madras Civil Courts Acts, see Act XIV. of 1869, s. 33, and Act III. of 1873, s. 20. For application of this Act to enquiries into the alleged misconduct of a Munsif.—See Act (XII. of 1887), s. 28 (3).

† The words quoted have been inserted by the Public Servants (Inquiries) Act Amendment Act (I. of 1897), s. 2.

‡ The word "India" has been substituted for the words "the East India Company" by Act (I. of 1897), s. 2.

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of "the Government not removeable from his appointment without the sanction of the Government,"* it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

3. The inquiry may be committed either to the Court, Board, or other authority to which the person accused is subordinate, or to any other person or persons to be specially appointed by the Government, Commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

4. When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser, and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government, before appointing the commission, shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury, or subornation of perjury, as the case may be.

7. At any subsequent stage of the proceedings the Government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him

* The words quoted have been substituted for the words "the East India Company, not removeable from his office without the sanction of the same Government" by Act (I. of 1897).

to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

8. The Commissioners shall have the same power of punishing contempts and obstructions to their proceedings as is given to Civil and Criminal Courts by "the Code of Criminal Procedure 1898,"* and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty

under the commission, and shall be entitled to the same protection as the zila and city Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall

be served through, and executed by, the zila or city Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras, or Bombay, then through the Supreme Court of Judicature† there. When the commission has been issued to a Court, or other person or persons having power

to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

9. All persons disobeying any lawful process issued as afore-said for the purposes of the commission, shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

11. At the beginning of the inquiry, the prosecutor shall exhibit the articles of charge to the Commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge, either the personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

12. The prosecutor shall then be entitled to address the Commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.

* The words within quotations have been substituted by Act X. of 1914.

† See 24 & 25 Vict., c. 104, s. 11.

13. The oral and documentary evidence for the prosecution shall then be exhibited: the witnesses shall be examined by, or on behalf of, the prosecutor, and may be cross-examined by, or on behalf of, the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without leave of the Commissioners, who also may put such questions as they think fit.

14. If it shall appear necessary before the close of the case for the prosecution, the Commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence, and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence, exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the Commissioners according to the like rules as the witnesses for the prosecution.

17. [*Examination of witnesses and evidence by prosecutor*].—*Repealed by the Repealing Act (XII. of 1876).*

18. The Commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole.

case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

20. When the Commissioners shall be of opinion that the articles of charge, or any of them are not drawn with sufficient clearness and precision, the Commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The Commissioners may also, if they think fit adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of the sickness or unavoidable absence of any witness, or other reasonable cause. When such application is made and refused, the Commissioners shall record the application, and their reasons for refusing to comply with it.

21. After the close of the inquiry, the Commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

22. The Government, on consideration of the report of the Commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special Commissioners have been appointed, also, if it thinks fit, refer the report of the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

23.* The powers of the Government under this Act may, in all cases be exercised by the Governor-General in Council, and when the person accused can be removed from his appointment by the Local Government, those powers may also be exercised by the Local Government.

* Section 23 has been substituted for the original section by Act (I. of 1897), s. 4.

24.* Nothing in this Act shall be construed to repeal any Act for Regulation in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

25. Nothing in this Act shall be construed to affect the authority of Government for suspending or removing any public servant for any cause without an inquiry under this Act.

ACT NO. VIII. OF 1851 †

The Indian Tolls Act, 1851.

PASSED ON THE 4TH JULY, 1851.

An Act for enabling Government to levy Tolls on Public Roads and Bridges.

WHEREAS it is expedient to enable Government to levy tolls upon roads and bridges; It is enacted as follows:—

Preamble.

* Repealed, as to Lower Provinces and North-Western Provinces of Bengal by Act XVI. of 1868, s. 1.

† Act XV. of 1864 is to be read with and taken as part of this Act.—See s. 1 of that Act, *infra*.

For power to extend the territorial operation of Act (VIII. of 1851), see Act (XV. of 1864), s. 3, *infra*.

For rules and orders under Act VIII. of 1851 in—

the North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 10;

Madras, see Madras List of Local Rules and Orders, Ed. 1894, p. 5;

the Central Provinces, see the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 2.

Under s. 1 of the Indian Tolls Act (VIII. of 1888), Act VIII. of 1851, and the Indian Tolls Act (XV. of 1864), are to be deemed in force throughout the territories administered by the Lieutenant-Governor of the Punjab on the 5th September 1888, and from 21st August 1857, and the 24th March 1864, respectively, to have been in force in the territories for the time being as administered as part of the Punjab

It has been declared in force—

in the Arakan Hill District by Reg. (IX. of 1874), s. 3;

in the Central Provinces (except s. 1, and the schedule), by Act (XX. of 1875), s. 3;

in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3;

in Upper Burma generally (except the Shan States), with a modification by Act (XIII. of 1898), s. 4;

in the Punjab by Act (VIII. of 1888), s. 1.

The Act has been repealed in the Presidency of Bombay by Bom. Act III. of 1875, s. 1. It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum

... See *Gazette of India*, 1881, Pt. I, p. 504.

I, C. Act, 1850.—14.

1. [*Repeal of Acts*].—*Repealed by Act (XIV. of 1870).*

2* The Governor of the Presidency of Fort William in Bengal, the Lieutenant-Governor of the North-Western Provinces of Bengal "and"† the Governor of the Presidency of Fort St. George in Council,‡ may cause such rates of toll, not exceeding the rates mentioned in the schedule annexed to this Act, as they respectively think fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the Government; and may place and to appoint collectors. the collection of such tolls under the management of such persons as may appear to them proper: and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land-revenue.

3. In case of non-payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable or any part of their burden of sufficient value to defray the toll; and, if any toll remains undischarged for twenty-four hours, with the costs arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll, and all expenses occasioned by such non-payment, seizure, and sale, and cause any balance that may remain to be returned, on demand, to the owner of the property; and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction:

Provided that if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...

... See *Gazette of India* ... 1886, Pt. I., p. 48.

The District of Lahaul ... Ditto ... 1886, Pt. I., p. 301.

It has been extended, under the same Act to the Scheduled District of Coorg.—See *Gazette of India* 1878, Pt. I., p. 45

* The authority of the Local Government in any part of British India not specified in s. 2 to which this Act and the Indian Tolls Act (XV. of 1864) may be or have been extended, is to be the same as if it had been specified in s. 2—See the Indian Tolls Act (VIII. of 1888), s. 2 (a).

† The word quoted has been inserted by Act (VIII. of 1888), s. 3.

‡ The words "and the Governor of the Presidency of Bombay in Council" were repealed by Act VIII. of 1888, s. 5.

4. No tolls shall be paid for the passage of troops, and military stores and equipages on their march, or of police-officers on duty, or of any person or property in their custody;* but no other exemption from payment of the tolls levied under this Act shall be allowed.

5. All police-officers shall be bound to assist the toll-collectors, when required, in the execution of this Act; and, for that purpose, shall have the same power which they have in the exercise of their common police-duties.

6. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or bridge, or for passing through any bazar situated thereon, and also every person who shall unlawfully and extortionately demand or take any other or higher toll than the lawful toll, or, under colour of this Act, seize or sell any property, knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the Magistrate to the person aggrieved; but this remedy shall not be deemed to bar or affect his right to have redress by suit in the Civil Court.†

7. A table of the tolls authorised to be taken at any toll-gate or station shall be put in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of the vernacular language of the district, to which shall be annexed, written or printed in like manner a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll.

8. The tolls levied under this Act shall be deemed public revenue; but the net proceeds thereof shall be applied wholly to the construction, repair, and maintenance of roads and bridges within the Presidency in which they are levied.

* For the last 16 words of s. 4, the words, "or of any person or property exempted by order of the Local Government," have been substituted in Upper Burma by the Upper Burma Laws Act (XX. of 1886), s. 7.

† Certain words, repealed by Act XII. of 1876, have been omitted.

SCHEDULE.*

On every four-wheeled Carriage on Springs	...	...	2 Rupees.
On every two-wheeled Carriage on Springs (except Native Hackeries)	...	...	1 Rupee.
On every Native Hackery on Springs	...	...	2 Annas.
On every four-wheeled Carriage without Springs	...	...	6 Annas.
On every two-wheeled Carriage without Springs	...	...	4 Annas.
On every Cart and Hackery not on Springs, and having wheels of less diameter than three feet six inches, and tyres less in breadth than three inches	...	...	8 Annas.
On every Cart and Hackery not on Springs, and not having wheels of less diameter than three feet six inches, and tyres less in breadth than three inches	...	...	2 Annas.
Buffaloes or Bullocks, per head	...	...	6 Pie.
On every Elephant	...	...	1 Rupee.
On every Camel	...	...	4 Annas.
On every Horse	...	...	1 Anna.
On every Tattu	...	...	6 Pie.
On every score of Sheep or Goats	...	...	2 Annas.
On every herd of Swine, per hundred	...	...	4 Annas.
On every Mule	...	...	3 Pie.
On every Ass	...	...	2 Pie.
On every Palanquin or Tonjon with Bearers	...	...	1 Rupee.
On every Palna or small Native Palanquin with Bearers	...	...	4 Annas.
On every Native Duli with Bearers	...	...	2 Annas.
On every Person carrying a load for hire	...	...	2 Pie.

N. B.—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

ACT NO. XII, OF 1851.†

The Madras City Land-revenue Act, 1851.‡

PASSED ON THE 14TH NOVEMBER, 1851.

An Act for securing the Land-revenue of Madras.

WHEREAS it is expedient that the land-revenue accruing due to the East India Company at Madras, Preamble, "within the local limits of the ordinary original civil jurisdiction of the High Court of judicature at Madras,"§ should be ascertained and collected in as summary a manner as in other parts of the territories under the government of the East India Company; It is enacted as follows:—

1. All assessable lands not the property of the East India Company, "within the local limits of the Assessment of unassessed lands in Madras town. ordinary original civil jurisdiction of the High Court of Judicature at Madras,"|| of which the rate of as-

* Repealed in places to which Act XV. of 1864 (Tolls on public Roads and Bridges) has been extended.

† Mad. Act VI. of 1867 is to be read with, and taken as part of, this Act.—See s. 33 of that Act.

‡ This short title has been given by Act XI. of '901.

§ The words quoted have been substituted by Act XII. of 1891, Sch. II.

|| The words quoted have been substituted by Act XII. of 1891, Sch. II.

assessment is not known, or which have not heretofore been assessed, shall be assessed at the rates customarily charged upon lands of a similar description in the neighbourhood, according as they may be situated respectively within or without the walls of Black Town.

2. Lakhiraj tenures of land in Madras, of which uninterrupted possession has been held under alleged grants, exempt or partially exempt from assessment for sixty years, shall be valid: no other lakhiraj tenures of land in Madras shall be deemed valid, unless the same are or shall be held under an unexpired grant from the British Government.

3. The Collector of Madras shall determine the rate of assessment to be laid on assessable land under section one of this Act, with reference to the rate assessed upon other land of a similar description in the neighbourhood, subject to an appeal to the Board of Revenue, to be made within six months from the notification by the Collector of the assessment fixed by him. The decision of the Board of Revenue upon such appeal shall be final.

4. The Collector may order any assessable land, or land already assessed, or charged with a rent payable to the East India Company, to be measured, for the purpose of determining the amount of assessment to be imposed, or, in the case of land already assessed or charged with a rent, for the purpose of ascertaining whether the actual dimensions, and the dimensions upon which the amount of assessment or rent was calculated, correspond.

5. Whenever, upon the measurement of any land under the preceding section, it shall be found that the dimensions upon which the amount of assessment or rent was calculated exceed the actual dimensions, a proportionate abatement shall be made for the excess, on the demand of the party entitled to claim it.

6. On the other hand, when the actual dimensions exceed the dimensions upon which the amount of assessment or rent was calculated, the excess shall be charged at the same rate as the rest of the land, the possession being left undisturbed: Provided that, when it shall appear that the excess has been caused by the surreptitious usurpation of ground belonging to another tenure, the act of the Collector in assessing it shall not prejudice the holder of such other tenure in any effort he may make to recover the ground usurped from it.

An appeal shall lie to the Board of Revenue against any extra assessment or additional rent charged by the Collector for excess by measurement under this section, if preferred within six months from the date of the Collector's order. Upon such appeal the decision of the Board of Revenue shall be final.

7. *[Recovery by distress and sale].—Repealed by Mad. Act (VI. of 1867).*

8. In the case of payment by any tenant or occupier not holding immediately under the East India Company, or the seizure and sale of his property, he may deduct the amount of the payment or levy from the next payment of rent to his landlord.

9. The claim of the East India Company for land-revenue or rent has priority over all other claims upon the land or to which property distrained upon the land may be liable.

10. If the Collector's claim for arrears of rent is disputed, the process of distraint and sale shall not be stayed, unless the amount claimed be lodged with the Collector.

11. Arrears of rent or revenue due to the East India Company are recoverable within six years next after the same are due, or next after an acknowledgment of the same in writing has been given by the person by whom the same is payable, or his agent, and not afterwards.

12. When a claim to hold land lakhiraj, or free of assessment, shall be set up under this Act, the Collector shall inquire into the claim; taking such evidence as the claimant may offer, or the public records supply; and shall report his proceedings in the case for the consideration of the Board of Revenue.

If the Board of Revenue are satisfied of the validity of the claim, they shall make an order accordingly, and such order shall be final. If they are not satisfied of the validity of the claim, they shall direct the Collector to assess the land, leaving the claimant to contest the Collector's demand in the Civil Courts, as herein provided.

13 Any person obstructing or molesting the Collector or any of his subordinate officers in the execution of their duty shall, on conviction before a Magistrate of the Town of Madras, be liable to a fine not exceeding one hundred rupees.

be liable to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the common gaol for a term not exceeding six months, or until the fine is sooner paid.

14. The Collector may punish any contempt committed in his presence in open kachahri or office by fine not exceeding two hundred rupees, and, in default of payment, by imprisonment in the common gaol for a term not exceeding one month.

From every such order of fine or imprisonment an appeal shall lie to the Board of Revenue, whose decision shall be final.

15. The Collector shall act in the execution of this Act under the usual control of the superior Revenue-authorities.

16. The ground-rents payable to the East India Company from lands in Madras are revenue within the meaning of the Act of Parliament, 21 Geo. III., Cap. 70;* and the Supreme Court of Judicature established by Royal Charter at Madras† has not any civil jurisdiction concerning the said ground-rents, or concerning anything ordered or done in the assessment or collection thereof.

17. All actions concerning any trespass or injury committed by any Revenue-officer acting under colour of this Act, or concerning any claim in respect of any goods taken by, or any moneys paid to, any Revenue-officer under this Act, or concerning any claim of rent or revenue on the part of the East India Company under this Act, shall be tried and determined in the Civil Courts established by the East India Company in the Zilla of Chingleput, notwithstanding that the cause of action in respect of which such action is brought arose, or the defendant therein reside, within the limits of the Town of Madras and every such action shall be brought within six months after the cause of action arose, and not afterwards.

18. The words "Collector" and "Board of Revenue" used in this Act shall be taken to mean any person or persons lawfully appointed to exercise the powers vested in the Collector and Board of Revenue respectively under this Act.

* See s 8 of that Statute.

† This provision applies to the present High Court.—See 24 and 25 Vict., c. 104, s. 11

ACT NO. VIII. OF 1852.*

The Sheriffs' Fees Act, 1852.

PASSED ON THE 6TH FEBRUARY, 1852.

An Act for remunerating the Sheriffs of Calcutta, Madras, and Bombay, for the execution of Mofussil Process under Act XXIII. of 1840.†

FOR making better provision for the Sheriffs of Calcutta, Madras, and Bombay, in remuneration for the execution of legal process issued by Courts out of the said towns respectively, It is enacted as follows :—

1. The several Sadr Courts of the Presidency of Fort William in Bengal and the Sadr Courts of the Madras and Bombay Presidencies respectively, shall make, and from time to time amend, a table of reasonable fees, to be taken on account of the execution by the Sheriff in such Presidency of any legal process issued by any Court, Judge, or Magistrate, beyond the jurisdiction of the several Supreme Courts established by Royal Charter in Calcutta, Madras, and Bombay, and of the sums to be allowed for costs of advertisements or other notifications of sales of property, according to the amount of the decrees to be satisfied by such sales,—which fees and sums shall be payable by the party applying for the process before it is sent to the Sheriff for execution, and shall be deemed costs in the cause.

2. The said table of fees and sums, when made or amended as aforesaid, shall be submitted by the Sadr Court of the Lower Provinces of the Presidency of Fort William to the Governor of Bengal, and by the Sadr Court of the North-Western Provinces of the said Presidency to the Lieutenant-Governor of those Provinces, and by the Sadr Courts of Madras and Bombay respectively to the Governor in Council of the Presidencies in which such Courts respectively have jurisdiction, for his approval ; and the said table of fees and sums shall have full force and effect, and

* Act VIII. of 1852 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh ... See *Gazette of India* ... 1880, Pt. I., p. 672.

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum ...

Ditto ... 1881, Pt. I., p. 504.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

† Act XXIII. of 1840 has been repealed, as to civil processes, by Act X. of 1877, and as to criminal processes, by Act V. of 1898; see now the Code of Criminal procedure (Act V. of 1898) ; and also the Code of Civil procedure (Act XIV. of 1882).

the fees and sums therein mentioned may be lawfully demanded and taken, from and after the approval thereof by the said Governor, Lieutenant-Governor, or Governor in Council, as the case may be.

3. Every such Court, Judge, and Magistrate, issuing process as aforesaid, shall cause a separate account of fees &c. to be kept of the amount of all fees and payment into treasury. sums so paid, and shall, from time to time as directed by Government cause the amount thereof to be paid into the local treasury.

4. The Government of each of the Presidencies and provinces as aforesaid shall twice in each year account for Payment to Sheriff. and pay over to the Sheriff for the time being the amount of fees and sums so paid, after deducting all necessary expenses of receiving and keeping account thereof, and remitting the nett proceeds thereof to Calcutta, Madras, or Bombay, as the case may be ; or, where the amount has accrued in the shrievalty of more than one Sheriff, shall apportion the sum paid accordingly between the Sheriff for the time being and the then late Sheriff.

5. The said Government respectively may compound with the Sheriff for a monthly payment to be made to Composition with Sheriff. him instead of such fees and sums, and during such composition may appropriate the said fees and sums to the purposes of Government.

6. Over and above such fees and sums, or any such monthly payment received instead of such fees and Additional fee for effect- ing sales. sums, the Sheriff shall be entitled to a fee after the rate of two rupees eight annas for each hundred rupees of the value of any goods or property taken and sold by him in execution of any process issued by any Court, Judge, or Magistrate beyond the local jurisdiction of the said Supreme Courts, which fee shall be taken to cover all expenses connected with the seizure and sale, except the expense of advertisements.

7. No fee, estimated upon the amount of the sum for which any person is taken in execution, shall be Fee for execution against person. payable to the Sheriffs of Calcutta, Madras, or Bombay, or any of their bailiffs, for taking the body of any person in execution on any process issued by any Court, Judge, or Magistrate out of the local jurisdiction of the said Supreme Courts respectively ; but instead thereof, such fees shall be payable to the Sheriff for taking the body of any person in execution of any such process as shall be settled, from time to time, by the Sadr Court as aforesaid.

NOTE.

Vide I. L. R. 16 Bom. 649 ; 13 Bom. 442.

I. C. Act, 1852.—15.

8. If any person taken in execution on any such process shall escape out of the legal custody of the Sheriff, the Sheriff shall not be liable to an action of debt for such escape, but shall be liable only to an action upon the case for damages in consequence of such escape sustained by the person or persons at whose suit the prisoner was taken.

ACT NO. XI. OF 1852.*

Titles to Rent-free Estates, Bombay.

PASSED ON THE 13TH FEBRUARY, 1852.

An Act for the Adjudication of Titles to certain Estates claimed to be wholly or partially Rent-free in the Presidency of Bombay.

WHEREAS in the territories of the Dekkhan, Khandesh, and Southern Mahratha country, and in other districts more recently annexed to the Bombay Presidency, claims against Government on account of inams and other estates wholly or partially exempt from payment of land-revenue, are excepted from the cognizance of the ordinary Civil Courts;†

and whereas it is desirable that the said claims should be tried and determined without further delay;

It is declared and enacted as follows:—

1. [*Rules not applicable to certain districts.*]—*Repealed by Act (IV. of 1894).*

2. The Governor of Bombay in Council may appoint in any zilla or other division of the territories subject to the Presidency of Bombay, which were not brought under the General Regulations of Government by‡ Regulation XXVIII. of 1827,§ an Inam Commissioner, with so many assistants, and such subordinate establishment, as may be necessary for the purposes hereinafter mentioned.

NOTE.

Vide 11 Bom. 222.

3. The duties of each Inam Commissioner and his assistants shall be discharged according to the rules in Schedule A annexed to this Act.

* As to application of Act (XI. of 1852), see Bom. Act (V. of 1879), s. 127. This title has been given by the Indian Short Titles Act (XIV. of 1897).

† Portions repealed by Act (IV. of 1904) have been omitted.

‡ Words repealed by Act (IV. of 1894) have been omitted.

§ Bombay Regulation (XXVIII. of 1827) has been repealed by Act (XII. of 1873).

4. In the adjudication of claims to exempt lands or interests therein, the titles of claimants shall be determined by the rules in Schedule B annexed to this Act.

5. Each Inam Commissioner and his assistants shall have the same authority to procure the attendance of witnesses to take evidence, &c. as now is, or from time to time may be, by law vested in the ordinary Civil Courts; and so far as concerns the penalties for not giving evidence, for false testimony, for resistance of process, contempts, and other like matters connected with cases under cognizance by any one of the said officers, his office shall be held to be a Court of civil jurisdiction of the same authority as the superior Civil Court of the zilla or district in which his office from time to time shall be established.

Provided that all complaints against, or appeals from, the proceedings of the Inam Commissioner or any of his assistants, in exercise of the authority conferred on them respectively by this section, shall be made under the second rule of Schedule A annexed to this Act, and shall not be cognizable by any other authority or in any other manner than as therein specified.

6. Bribery, extortion, and generally all acts of abuse or misapplication of authority, or other misconduct, committed by any officer belonging to the establishment of the Inam Commission, or temporarily employed therein under the provisions of this enactment, shall be punishable as criminal offences with fine and ordinary imprisonment without labour for a period not exceeding five years, and the receipt of a present, directly or indirectly, by any such officer from any person against whom or in whose behalf he may be officially employed, shall be considered extortion.

And no penalty or punishment adjudicated under this clause shall preclude any other civil prosecution to which the offender may be liable.

SCHEDULE A.

Rules for defining the duties of each Inam Commissioner and his Assistants.

1. The duty of the Inam Commissioner and his assistants shall be to investigate, in the manner prescribed by this enactment, the titles of persons

Duty defined.

holding or claiming against Government the possession or enjoyment of inams or jagirs, or any interest therein, or claiming exemption from the payment of land-revenue, and generally to act according to the instructions of Government in all matters not specifically provided for in this enactment.

2. All orders of the Assistant Commissioners shall be appeal-
Appeal from orders of able to the Inam Commissioner, who shall
Assistant Commissioners, also have the authority of revising and of
and Commissioner. modifying, reversing, or annulling, if neces-
 sary, their orders and proceedings and the orders and proceedings
 of the Inam Commissioner shall be in like manner appealable to,
 and subject to modification, reversal, or annulment by, the Governor
 of Bombay in Council, whose orders shall in every case be final.

3. The Inam Commissioner or his assistants shall receive, from
Duty to receive state- the persons holding or claiming to hold lands
ments of title, or any interest therein exempt from the
 payment of revenue, statements explaining the nature of the title
 by which the lands or interests are so held, and shall take and
and record evidence in record the evidence offered in support of
support such statements.

4. These statements may be received, either directly by the
Statements how received. officers of the Inam Commission, or through
 the medium of the revenue-authority of the
 taluqa in which the land or interest so held or claimed as exempt is
 situated, or in which the alleged proprietor resides, without any
 previous procedure, except a general invitation to such landholders
 of a district who shall hold or claim to hold lands exempt as afore-
 said to state the nature of their titles.

5. But when such general invitation is not sufficiently attended
Notice when to issue. to, a notice may be issued to any party hold-
 ing or claiming to hold any lands or any
 interest therein wholly or partially exempt as aforesaid, requiring
 him, personally or by his agent, to show his title.

The notice issued in such cases shall state the nature of the
Contents of notice. investigation which is intended, and shall
 call upon the alleged proprietor of the
 exempt lands or interest held or claimed to be held exempt as
 aforesaid, to attend, either personally or by an authorized agent, at
 a specified place, and within a specified period (which shall never
 be less than two months from the date of the notice being served),
 to explain the nature of his title to hold such lands or interest
 exempt as aforesaid, and to produce all the evidence forthcoming
 to prove it.

The notice shall further explain that a failure to comply with
 its terms will render the land, or interest to which it relates, liable
 to attachment.

6. The notice shall be served upon the party holding or claiming to hold the land or interest exempt as aforesaid, or, if his place of residence be not known, upon the person acting for him, or, in default of such, upon the person in charge of the land or interest.

7. If such persons cannot be found, a notice shall be posted in the office of the native Revenue-officer of the district, and in the chauri, or most public place of the village, where the land or interest under inquiry is situated, calling on any person who may claim as proprietor to appear, either personally or by his agent, to prove his title within six months from the date of the notice, under penalty of the attachment of the land or interest, and on failure of the appearance of a claimant, the land or interest shall be liable to attachment.

8. The attachment provided for by rules 5 and 7 shall be enforced by the Collector or chief revenue-authority of the district in which the land to which it relates is situated, at the written requisition of the Inam Commissioner or his assistant, which shall be a sufficient warrant to the Collector for the attachment of the land, and for the collection of the rents accruing therefrom on account of Government during its attachment.

9. As soon as possible after the receipt of the statements in each district, and of the evidence by which they are supported, they shall be tested by the entries in the Government-accounts and the State-records and by any other evidence procurable, whether in favour of Government or of the claimants, and decisions shall then be passed on them as to the continuance, resumption, or full or partial assessment of the lands.

10. In cases where the notices provided for in sections 5 and 7 fail to procure the attendance of the persons to whom they are addressed, and no claimant appears to prosecute his claim, the Commissioner or Assistant Commissioner shall proceed to ascertain the facts of the case from such evidence as may be forthcoming or procurable, and shall pronounce such decision thereupon as to him shall seem just regarding the lands or interests to which the notices referred.

11. An attachment enforced under rule 8 shall be removed by the Collector or chief revenue-authority by whom it was made, on receipt of a communication from the Inam Commissioner or his assistant, certifying that he considers the attachment to be no longer necessary; but the rents collected from the land during its attachment shall in no case be restored to the alleged proprietor, except under the general or special instructions of Government.

12. Certified copies of decisions, made according to the provisions of rule 9, shall be delivered, as soon as possible after each decision is passed, to the persons on whose claims the decision shall have been pronounced, or their agents; and copies of all decisions made in the absence of any claimant, according to the provisions of rule 10, shall be sent to the mamlatdar, or other revenue-manager of the taluq in which the lands to which they relate are situated, who shall deliver them to the parties affected by them, should they be discoverable, or otherwise cause them to be publicly posted in the village to which the lands in question belong.

13. Decisions affecting any lands or any interests therein passed under this enactment shall be carried into execution by the Collector or chief revenue-authority of the district in which the lands to which they relate are situated, at the requisition of the Inam Commissioner or his assistant, in any manner which may, from time to time, be prescribed by the Governor of Bombay in Council.

14. In all cases where a person may be desirous appealing against any decision of the Inam Commissioner or his assistants, he shall apply by a petition, addressed to the authority by whom, according to rule 2, his appeal is cognizable, which petition shall be presented to such authority within one hundred days from the date of the decree appealed against, a copy of which must accompany the petition of appeal, and no appeal which is not so made shall be admitted, without proof of the existence of a just and necessary cause for its not having been preferred in due time; and it is hereby provided that no decree passed by the Inam Commissioner or any of his assistants shall be liable to be set aside for want of form in the proceedings, but only for matters affecting the justice of the decision.

SCHEDULE B.

Rules for the Adjudication of Title to Estates claimed as Inam or exempt from payment of Land-revenue.

1. All lands held under a specific and absolute declaration by the British Government or any competent officer acting under it, that they were to be continued, hereditarily or in perpetuity, exempt wholly or partially from the payment of revenue, are to be so continued according to the purport of such declaration.

Provision 1st.—If any question shall arise as to the competency of the officer to make or give such declaration as aforesaid, the Commissioner or Assistant Commissioner is to suspend his judgment, and report the circumstances of the case to the Governor of Bombay in Council, to whom a power is hereby reserved of determining finally whether such officer was competent to make or give such declaration, and the Commissioner or Assistant Commissioner, upon receiving the determination of the said Governor in Council, shall decide accordingly.

Continuance of holding under sanad declaring it hereditary. 2. Any land held under a sanad declaring it to be hereditary shall be so continued according to the terms of the sanad.

Provision 1st.—Provided that the grant was either made, or Where granted by competent authority ; specifically recognized, by authority competent to alienate Government-revenue in perpetuity, the question of which recognition and competency is to be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

Provision 2nd.—And provided that there be nothing in the and conditions of tenure legally observable ; conditions of the tenure which cannot be observed without a breach of the laws of the land, or the rules of public decency.

Provision 3rd.—And provided that the grant was not afterwards revoked or disallowed, or an alteration of its terms ordered or recognized by a competent authority.

3. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of sixty years before the introduction of the British Government, and then in the authorized possession of a grandson in male descent, or male heir of the body of such grandson, of the original grantee, shall continue to be so held so long as there shall be in existence any male heir of the body of the person who was incumbent at the introduction of the British Government, tracing his lineage from such incumbent through male heirs only.

4. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of forty years before the introduction of the British Government, and then in the authorized possession of a son, or male heir of the body of a son, of the original grantee, are to be continued for one succession further than that of the person who was incumbent at the introduction of the British Government, that is, until the death of his last surviving son.

Provision 1st.—The authorized possession contemplated by rules 3 and 4 does not involve the necessity of proving any specific authority from, or recognition by, the Government or paramount Power. The mere entry of the holding, as continued in the genuine accounts of the district-officers (even in those not audited and passed by the Government of the time being), will be sufficient to bring it under the heads of "uninterrupted" and "authorized" so far as regards the purposes of this rule; provided only that there are no entries in the Collectorate-accounts which shew that the holding of such lands exempt as aforesaid must have been unauthorized by the Government or paramount Power.

Provision 2nd.—If there be not evidence forthcoming to disprove a claimant's assertion that his holding has been undisputedly enjoyed for the number of years and descents requisite to fulfil the conditions of rules 3 and 4 respectively, his prescriptive right shall be admitted.

Provision 3rd.—The introduction of the British Government is to be reckoned from the time the East India Company became the Government or paramount authority over each district as regards its inams. In the territories ceded by, or conquered from the Peshwa, therefore, whether khalsat mahals or saranjams, &c., in territories late of Peshwa, held exclusive of inams, &c., the introduction of the British Government will date from the close of that of the Peshwa.

But in case of the lapse of an independent principality, or of a jagir more ancient than the Peshwa's government, and over the inams of which he did not claim any authority, the introduction of the British Government should be reckoned only from the date at which the general management of the districts may have come into the hands of the Company,

and in case any question shall arise as to the precise date when the East India Company became the Government over any district, or when the general management of any district came into their hands, such question shall be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

6.* Land held as wholly exempt from payment of revenue, or on partial assessment, the possession of which is not continuable under the preceding rules, is to be resumed on the demise of the incumbent.

* There is no Rule numbered 5.

Provision 1st.—In case the incumbent at the time of the introduction of the British Government may have died, the permission to hold for life is to be extended to the person in whose name the land may be continued, when the investigation is commenced, if there be no fraud apparent, nor other reason for withholding this indulgence.

Provision 2nd.—When land is evidently held by fraud recently committed (as when an inam which was resumed under the late Government has been re-occupied under the present Government without authority, or as when a pretended inam is found to have originated since the introduction of this Government with the connivance of district or village-officers), it shall be at once resumed, not being continuable under this or any of the preceding rules.

7. All lands held for the support of mosques, temples, or similar institutions, of the permanent character of which there can be no doubt, are to be continued permanently, even though their permanent continuance may not have been expressly provided for when they were granted.

Provisions 1st, 2nd, and 3rd—The same as the corresponding provisions of rule 2 of this schedule in those cases in which title-deeds or other records proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming

Provision 4th.—When there is no proof forthcoming to shew whether or not an inam, coming under the provisions of this rule, was granted, or even specially recognized, by a competent authority, still, if it has been undisputedly enjoyed for a period of forty years before the introduction of the present Government, it shall be permanently continued, and enjoyment proved by the mere entry of the inam, as continued in genuine accounts of the district-officers (even in those not passed by the Government of the time being) is to be considered sufficiently “uninterrupted” to give an inam the benefit of this provision, if there be no entries in the Government-accounts which shew that it must have been unauthorized by them.

Provision 5th.—If the forthcoming records do not go far enough back to test the existence of enjoyment of the duration contemplated in provision 4th as establishing full prescriptive title in such inams, still, if so far as they do go, they are not opposed to the claimants' assertion that sufficient enjoyment has taken place, the prescriptive title of the inam shall

be admitted according to his assertions, unless there be other evidence forthcoming to disprove them.

Provision 6th.—The peculiar advantages of this rule shall not apply to the holdings of individuals in their own names for the performance of ceremonial worship, claims to which must be decided under the rules for personal claims.

Provision 7th.—When claims of the denomination coming under this rule are found to be unsupported by proof of original valid title, and are proved void of sufficient prescriptive enjoyment, they are to be adjudicated according to rule 6.

8. All lands authorizedly held by an official tenure which it is evident from local usage was meant to be hereditary, and has been so considered heretofore, even though there be no sanads declaring it to be so,—for instance, inams which form the authorized emoluments of any hereditary office, as of kazis village-joshis, &c., and are not merely personal,—are to be continued permanently.

Provisions 1st, 2nd, and 3rd.—The same as the corresponding provisions of rule 2 of this schedule in those cases in which title-deeds or other records, proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Provision 4th.—When there is no proof forthcoming to shew whether or not an inam, coming under the provisions of this rule, was granted or even specifically recognized by competent authority, still, if it has been undisputedly enjoyed as an official, and not merely personal, holding from the earliest period to which the forthcoming evidence does relate, it shall be continued permanently as official emolument, unless the claimant's own statement renders this course improper.

Provision 5th.—The provisions of this rule are not in any way to apply to emoluments continued for service performed to the State, as the service watans of desais, sardesais, nadgaudas, deshpanδες patels, kulkarnis, mhars, talavaras, whose claims are to be disposed of according to the rules which are or may be established for the regulation of such holdings.

Provision 6th.—It is to be understood that mere length of enjoyment of land as inam by an official person is not of itself sufficient to entitle a claim to be brought under this rule.

Provision 7th.—If a holding claimed under this rule be found incapable of permanent continuance under Benefit of preceding rules when allowable. it, the claimant shall be allowed the advantages of any of the preceding rules of this schedule which may be applicable to his case.

9. On the resumption of any lands under the rules of this schedule, a moiety or other portion may be Provision for widows of last incumbents of resumed holdings. continued to the widows of the last incumbents during their lives, in cases of proved poverty and destitution.

Provision 1st.—In the case of a holding which is recognizable as an hereditary personal inam, the widow Continuance to widow and sole heir of holder of hereditary personal inam. of a proprietor who dies without surviving male issue, or other heirs to whom his inam will of necessity descend, is by right his sole heir, and during her life the inam cannot be regarded as having lapsed to Government: it should, therefore, in such a case, be continued undiminished during the widow's life.

10. These rules shall not be necessarily applicable to jagirs, Exception of certain tenures from application of rules. saranjams, or other tenures for service to Government, or tenures of a political nature the titles and continuance of which shall be determined as heretofore under such rules as Government may find it necessary to issue from time to time.

11. Any of these rules may be relaxed in favour of claimants under instructions from the Governor of Bombay in Council in whom shall also be Modification in favour of claimants and interpretation of rules. vested the power of interpreting the precise meaning of any of the rules respecting which a question may arise.

ACT NO. XXX. OF 1852.*

The Indian Naturalization Act, 1852.

PASSED ON THE 16TH JULY, 1852.

An Act for the Naturalization of Aliens.

WHEREAS it is expedient to provide for the naturalization of aliens resident in the territories under the government of the East India Company; It is enacted as follows:—

Preamble.

1. Any person, whilst actually residing in any part of the territories under the government of the East India Company, may present a memorial to Government,† praying that the privileges of naturalization may be conferred upon him.

2. Such memorial shall state, to the best of the knowledge and belief of the memorialist, his age, place of birth, place of residence, profession, trade, or occupation, the length of time during which he has resided within the said territories, that he is settled in the said territories, or is residing within the same with intent to settle therein, and any other particulars which the Government may require to be stated therein, and such memorial shall be in writing, and signed by the memorialist, and accompanied by an affidavit sworn by him, verifying the truth of the statements contained therein.

Contents of petition.

Affidavit to accompany.

* Act XXX. of 1852 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared in force—

in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4;

in the Arakan Hill District by Reg. (IX. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
Aden	...	Ditto	...	1879, Pt. I., p. 434.
West Jalpaiguri	...	Ditto	...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum	...	Ditto	...	1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	...	Ditto	...	1879, Pt. I., p. 383.
Jaunsar Bawar	...	Ditto	...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	Ditto	...	1886, Pt. I., p. 48.
The District of Lahaul...	...	Ditto	...	1886, Pt. I., p. 301.
Coorg	...	Ditto	...	1881, Pt. I., p. 203.
The District of Silhat	...	Ditto	...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)	...	Ditto	...	1897, Pt. I., p. 299.

† For definition of the word "Government," see s. 12, *infra*.

3. The memorial shall be considered by the Government to whom it shall be presented, who shall inquire into the circumstances of the case, and may require such evidence, either by affidavit or otherwise, as they may deem proper, in addition to the before-mentioned affidavit of the memorialist, to prove the truth of the statements contained in such memorial.

4. The Government may, if they shall think fit, issue a certificate in writing, reciting such of the contents of the memorial as they may consider to be true and material, and granting to the memorialist all the rights, privileges, and capacities of naturalization under this Act, except such rights, privileges, or capacities if any, as may be specially excepted in such certificate.

5. The certificate shall be delivered to the memorialist, and a copy or duplicate thereof, together with the memorial upon which the same shall be obtained, and any affidavit which may accompany such memorial or be produced in support thereof, shall be filed by the Secretary to the Government, or such other officer as the Government may direct; and such Secretary or officer shall keep an alphabetical list of all persons who may be naturalized by such Government.

6. [*Cancelment of certificate for false statement. Ceasing of rights there-under*].—*Repealed by Act (XVI. of 1919).*

Fees.

7. Such fees shall be payable in respect of the proceedings hereby authorized as shall be fixed by the Government.

8. Upon obtaining such certificate, and taking and subscribing the oath as hereinafter prescribed, the memorialist shall, within the said territories under the government of the East India Company, be deemed a natural-born subject of Her Majesty as if he had been born within the said territories, and shall be entitled within the said territories, to all the rights, privileges, and capacities of a subject of Her Majesty born within the said territories, except such rights, privileges, and capacities, if any, as may be specially excepted in such certificate.

9. [*Saving of jurisdiction of Indian Courts*].—*Repealed by Act (XVI. of 1874).*

10. Within sixty days from the day of the date of such certificate, the memorialist named in such certificate shall take and subscribe the oath contained in the schedule annexed to this Act.

11. Such oath, as well as any other oath or affidavit required Administration of such by this Act, may be administered by any oath. Magistrate or Justice of the Peace within the limits of his jurisdiction, or by any other person to be appointed for that purpose by Government; and the person who shall administer the oath mentioned in the schedule to this Act annexed shall grant to the memorialist a certificate in writing of his having taken and subscribed such oath, and of the date of his taking and subscribing the same, and shall forward to the Government the oath so taken and subscribed, together with a duplicate of such certificate, which oath and duplicate certificate shall be filed and kept with the memorial.

* 11A. (1) Where the Government of any part of the said territories in which a person to whom a Revocation of certificates of naturalization. certificate of naturalization has been issued under this Act for the time being resides (hereinafter called 'the Local Government') are satisfied that the certificate has been obtained by false representation or fraud or by concealment of material circumstances, or that the person to whom the certificate has been issued has shown himself by act or speech to be disaffected or disloyal to His Majesty, the Local Government shall by order in writing revoke the certificate.

(2) Without prejudice to the foregoing provisions, the Local Government shall by order in writing revoke a certificate of naturalization in any case in which they are satisfied that the person to whom a certificate was issued—

- (a) has during any war in which His Majesty is engaged unlawfully traded or communicated with the enemy or with the subject of an enemy state or been engaged in or associated with any business which is to his knowledge carried on in such a manner as to assist the enemy in such war; or
- (b) has within five years of the date of the issue of the certificate been sentenced by any Court in His Majesty's dominions to transportation or penal servitude or to imprisonment for a term of not less than twelve months, or to pay a fine of not less than one thousand rupees; or
- (c) was not of good character at the date of the issue of the certificate; or
- (d) has since the date of the issue of the certificate been for a period of not less than seven years ordinarily resident out of His Majesty's dominions otherwise than as a representative of a British subject, firm or company carrying on business, or an institution

* Sections 11A and 11B have been added by Act XVI. of 1919.

established, in His Majesty's dominions or in the service of the Crown, and has not maintained substantial connection with His Majesty's dominions; or

(e) remains according to the law of a state at war with His Majesty a subject of that state;

and that (in any case) the continuance of the certificate is not conducive to the public good.

(3) Notwithstanding anything contained in sub-sections (1) and (2), no Local Government shall revoke a certificate of naturalization issued by another Government without the concurrence of that Government.

(4) The Local Government may, if they think fit, before making an order under this section refer the case for such inquiry as is hereinafter specified, and in any case to which sub-section (1) or clause (a), (c) or (e) of sub-section (2) applies, the Local Government shall, by notice given to, or sent by post to the last known address of, the holder of the certificate, give him an opportunity of claiming that the case be referred for such inquiry and if the holder so claims in accordance with the notice, the Local Government shall refer the case for inquiry accordingly.

(5) (a) An inquiry under this section shall be held by such person or persons and in such manner as the Local Government may direct in each case.

(b) Persons appointed under clause (a) of this sub-section shall be deemed to be public servants within the meaning of the Indian Penal Code,* and shall for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908,† when trying a suit, in respect of the following matters:—

(i) enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents; and

(iii) issuing commissions for the examination of witnesses;

and any proceeding under this sub-section shall be deemed to be a 'judicial proceeding' within the meaning of sections 193 and 228 of the Indian Penal Code.*

(6) Where a certificate of naturalization has been revoked under this section, the revocation shall have effect from such date as may be directed by the Local Government, and thereupon the certificate shall be given up and cancelled, and any person refusing or neglecting to give up his certificate shall be punishable with fine which may extend to one thousand rupees.

* Act XLV. of 1860.

† Act V. of 1908.

11B. (1) Where a certificate of naturalization is revoked, the former holder thereof shall thenceforth be deemed to be an alien and a subject of the state to which he belonged at the time the certificate was issued.

(2) Where a certificate of naturalization is revoked, the Local Government may by order in writing direct that the wife and minor children (or any of them) of the person whose certificate is revoked shall thenceforth be deemed to be aliens; but where no such direction is made, the nationality of the wife and minor children of the person whose certificate is revoked shall not be affected by the revocation:

Provided that—

(a) it shall be lawful for the wife of any such person within six months after the date of the order of revocation to make a declaration of alienage, and she and any minor children of her husband and herself shall thenceforth be deemed to be aliens; and

(b) in the case of a wife who was at birth a natural-born subject of His Majesty, no such order as aforesaid shall be made unless the Local Government is satisfied that, if she had held a certificate of naturalization in her own right, the certificate could properly have been revoked under section 11A, and the provisions of that section as to referring cases for inquiry shall apply to the making of any such order as they apply to the revocation of a certificate."

12. The word "Government" in this Act shall "save in so far as a different intention is expressed" be deemed to mean the person or persons for the time being lawfully entitled to administer the executive government in that part of the said territories in which the memorialist shall reside at the time of presenting such memorial. The word "Magistrate" shall include any person lawfully exercising the powers of a Magistrate.

13. In every case in which the word "oath" or "affidavit" is used in this Act, an affirmation to the same effect as the oath or affidavit required shall be sufficient in cases where the person required to make such oath or affidavit shall be a person allowed by law to affirm in civil cases, and in every such case such affirmation shall be made before the person authorized to administer the oath, and the word "oath" or "affidavit," wherever used in this Act, shall include such affirmation.

* The words within quotations have been added by Act XVI. of 1919.

† Certain words after this which were repealed by Act X. of 1914 have been omitted,

SCHEDULE.

OATH.

I. A. B., of (here state the description of the party) do swear (or, being one of the persons allowed by law to affirm in civil cases, do affirm) that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland and of these territories.*

(Signed) A. B.

ACT NO. II. OF 1853.†

The Landholders' Public Charges and Duties Act, 1853.

PASSED ON THE 4TH FEBRUARY, 1853.

An Act to remove doubts as to the liability of all subjects of Her Majesty to the same jurisdictions as natives in respect of public and police duties and public charges incident to the holders of land or their local Agents or Managers.

WHEREAS, by virtue of Act No. IV., 1837, it is lawful for any subject of Her Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any

* Certain words, which were repealed by Act (XII. of 1876), have here been omitted.

† Act II. of 1833 has been declared to be in force in the whole of British India except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared in force—

in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4 ;

in the Arakan Hill District by Reg. (IX. of 1874), s. 3 ; and

in the Santhal Parganas by Reg. (III. of 1874), s. 3, as amended by Reg. (III. of 1899), s. 3

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
--------------	---------------------------------	-----------------------

West Jalpaiguri	Ditto ...	1881, Pt. I., p. 74.
------------------------	-----------	----------------------

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	Ditto ...	1881, Pt. I., p. 504.
---	-----------	-----------------------

The scheduled portion of the Mirzapur District	Ditto ...	1879, Pt. I., p. 383.
---	-----------	-----------------------

Jaunsar Bawar	Ditto ...	1879, Pt. I., p. 382.
----------------------	-----------	-----------------------

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghari Khan	Ditto ...	1886, Pt. I., p. 48.
---	-----------	----------------------

The District of Lahaul	Ditto ...	1886, Pt. I., p. 301.
-------------------------------	-----------	-----------------------

The Scheduled Districts of the Central Provinces	Ditto ...	1879, Pt. I., p. 771.
---	-----------	-----------------------

The District of Silhat	Ditto ...	1879, Pt. I., p. 631.
-------------------------------	-----------	-----------------------

The rest of Assam (except the North Lushai Hills)	Ditto ...	1897, Pt. I., p. 299.
--	-----------	-----------------------

The Porahat Estate in the Singhbhum District	Ditto ...	1897, Pt. I., p. 1059.
---	-----------	------------------------

It has been extended, under the same Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I., p. 606.

part of the territories under the Government of the East India Company; and whereas doubts have arisen whether all subjects of Her Majesty acquiring or holding property in land, or in any emoluments issuing out of land, or acting as local agents or managers of such property, are subject to the same jurisdictions as natives for enforcing the discharge of public and police duties incident to the holding of such property, or for the enforcement of public charges and assessments upon or in respect thereof; and whereas it is just and reasonable that all persons who may think fit to hold such property, or to be the local agents or managers thereof, should be liable to the public burthens and duties incident thereto, and, in case of neglect or refusal to discharge the same, should be subject to the same jurisdictions as natives; It is therefore declared and enacted as follows:—

1 No person whatever, being the owner, holder, or farmer, of any property in land, or any emoluments issuing out of land, in any part of the said territories, whether in perpetuity or for a term, or being a local agent or manager of any such property, is, by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the police or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof.

2. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations, and procedure and to the same jurisdictions, as if he were a native of the said territories

Non-exemption from public charges or duties of landholders, &c., by reason of place of birth or of descent.

Amenability to laws, &c., for default in respect of such charges and duties.

ACT NO. VI. OF 1853.*

The Rent Recovery Act, 1853.

PASSED ON THE 15TH APRIL, 1853.

An Act relating to summary suits for arrears of rent,† to sales of putni-taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.

WHEREAS, by Regulation VIII., 1831,† of the Bengal Code, the hearing and decision of summary suits or claims relating to arrears or exactions of rents were transferred from the Judges of the zilla or city Courts to the Collectors of land-revenue of the several Districts ;

Preamble.

and whereas, by Regulation VII., 1832,‡ of the Bengal Code, the conduct of sales of putni-taluqs and other saleable tenures under Regulations VIII., 1819, and I., 1820, of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector of land-revenue or head assistant to the Collector or Deputy Collector, subject to an appeal as therein provided ;

and whereas, by Act VIII., 1835,§ the power theretofore vested in the Judges of the Diwani Adalat of selling land in satisfaction of summary decrees for rent was transferred to the Collectors of land-revenue, and it was enacted that all sales for the recovery of arrears of rent held under clause 7, section 15, Regulation VII., 1799,§ should be conducted by the Collector, his Deputy, or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the kachahri of the zilla Court or local Adalat and that of the Collector ;||

and whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the above-mentioned Regulations and Acts, where lands situate within the zilla or other district of one Collector form part of an entire estate paying revenue to the Collector of another zilla or district :

In order therefore to avoid such doubts, and also to define who are the proper officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held in putni or

* Act VI. of 1853 has been declared in force by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3, in the Santhal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874), in the Districts of Hazaribagh, Lohardaga and Manbhum, Pargana Dhalbhum, and the Kolhan

This title has been given by the Indian Short Titles Act (XIV. of 1897).

† Ben. Reg. VIII. of 1831 has been repealed by Act X. of 1859.

‡ Ben. Reg. VIII. of 1832 has been repealed by Act VI. of 1871.

§ Act VIII. of 1835 and Ben. Reg. (VII. of 1799) have been repealed by Act XVI. of 1874.

|| Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

other tenure at one entire rent are situate in two or more collectorates ;* It is enacted as follows :—

1. If the lands which may be the subject of any such sale, or Conduct of sale of lands to the rent of which any such suit may re- when all in one collectorate. late, be all situate in one collectorate, the Collector of such collectorate is the Collector to conduct the sale or to hear and decide the suit.

If one taluq or tenure shall comprise lands situate in two or more collectorates, or if any lands situate in two or more collectorates be held under one lease or engagement or at one entire rent, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale of such taluq or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

2. If a Collector to whom application shall be made to exercise any of the powers above-mentioned shall entertain any doubt as to whether the lands or the greater part of them are situate within his collectorate, he shall report the case for the order of the Board to which he is subordinate, and if ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction.

3. The word " collectorate " in this Act means the zilla or other district to which a Collector is appointed, and no lands situate beyond the limits of such zilla or district shall be deemed to be situate within the collectorate, by reason of their forming part of an estate paying revenue to the Collector thereof.

4. An independent Deputy Collector may, within his deputy collectorate, exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his collectorate ; and with reference to the exercise of such powers and jurisdictions, his deputy collectorate shall be deemed a collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

5. An independent Deputy Collector is an officer appointed by Government to act as Deputy Collector independently of a Collector whether his office is one for the receipt of revenue or not.

" Deputy collectorate." A deputy collectorate is the district within which an independent Deputy Collector is directed by Government to act.

* Here certain words, repealed by Act (XII. of 1891), Sch. I., have been omitted.

6. In cases of sales by an independent Deputy Collector under the above-mentioned Regulations or Act, any notice thereby required to be stuck up at the kachahri of the Collector may be stuck up at the kachahri of the Deputy Collector.

7. An independent Deputy Collector may exercise the powers assigned to him over any part of his deputy collectorate in public kachahri, in whatever part of his deputy collectorate the same may be situate or held.

8. Any notice required by the above-mentioned Regulations or Act to be given by advertisement to be stuck up at the kachahri of the zilla Court or local Adalat, shall be stuck up at the zilla Court or local Adalat within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

ACT NO. XI. OF 1853.

Shore-nuisances (Bombay and Kolaba).

PASSED ON THE 15TH JULY, 1853.

*An Act to facilitate the removal of nuisances and encroachments below high-water mark in the Islands of Bombay and Kolaba.**

WHEREAS there is a large sea-shore in the Islands of Bombay and Kolaba, and it is expedient, with a view to the safe navigation of the harbour of Bombay, and to the public interests generally, to facilitate the removal of nuisances, obstructions, and encroachments below high-water mark in the said harbour, or upon or about the shores of the said islands; It is enacted as follows:—

1. It shall be lawful for the Collector of land-revenue at Bombay to give notice requiring the removal of any nuisance, obstruction, or encroachment anywhere below high-water mark in the said harbour of Bombay, or upon or about the shores of the said islands; such notice shall be given by affixing the same in some conspicuous place on or near

* Repealed by Act XXII. of 1855, so far as relates to the removal of any obstruction, impediment, or public nuisance affecting, or likely to affect, the Port of Bombay.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

to the encroachment, obstruction, or nuisance complained of,
 Contents. and by publication thereof in the *Bombay Government Gazette*, and shall state that, unless the nuisance, obstruction, or encroachment be removed or abated within one month, the same will be removed or abated by the said Collector; such notice may be
 Form. in the form No. 1 in the schedule to this Act annexed or to the like effect.

2. If any person shall deny the right of the said Collector to effect such abatement or removal, he shall, within one month after such notice shall have been given as aforesaid, apply to the Supreme Court of Judicature at Bombay, by petition, setting forth the grounds of his alleged right, and praying that the said Collector may be restrained from causing such abatement or removal, and the said Court may thereupon (on the petitioner's giving sufficient security for costs), fix a time for hearing and adjudicating upon such petition, and give such directions and make such orders as the said Court may think just, and the said Court may also make an order for restraining the alleged nuisance, obstruction, or encroachment from being extended, or from being abated or removed by the said Collector, until after adjudication upon the said petition, or the dismissal thereof for want of prosecution.

Onus of proving right. 3. Upon the hearing of every such petition, the onus of proving the alleged right shall be on the petitioner.

4. No person shall be allowed, after the expiration of such period of one month, to present any such petition as aforesaid, unless on satisfactorily accounting to the said Court for the delay.

5. If no such petition shall be presented within the said period of one month, or if the same be presented and determined against the right of the petitioner, or be dismissed for want of prosecution, it shall be lawful for the Collector to cause such abatement or removal as aforesaid by any person or persons to be authorized by warrant under his hand, and such warrant may be in the form No. 2 in the schedule to this Act annexed, or to the like effect; and the said Collector, and any person acting under his warrant, shall not be answerable for any damage unavoidably occasioned in the removal of any such nuisance, obstruction, or encroachment.

6. The said Collector may sell the materials of any encroachment or obstruction removed under this Act, and may apply the proceeds of sale

in or towards payment of the expenses of the removal, and if any surplus shall remain, the same shall be forfeited, and be paid and applied in such manner as the Governor of Bombay in Council shall direct.

7. Nothing in this Act shall prejudice or effect the rights of Saving of rights of the Crown in any part of the said harbour, Crown. or of the sea-shore of the said islands, or preclude or interfere with any such proceedings, civil or criminal, for abating such nuisances and encroachments, as aforesaid, as might have been had if this Act had not been passed.

"High-water mark" defined. 8. The words "high-water mark" in this Act shall mean the ordinary line of high-water at monsoon tides.

SCHEDULE.

FORM NO. 1.

NOTICE is hereby given by the Collector of land-revenue in Bombay, under Act XI. of 1853, that (*describe the encroachment*) is to be removed or abated within one month from the date hereof, otherwise the same will be removed or abated by the said Collector under the authority of the said Act.

Dated the day of in the year of our Lord.

(*Signature of Collector.*)

FORM NO. 2.

THIS warrant, granted by the Collector of land-revenue in Bombay, under Act XI. of 1853, is to authorize of to remove (*describe encroachment*).

Dated

(*Signature of Collector.*)

ACT NO. XIX. OF 1853.

The Recusant Witnesses Act, 1853.*

PASSED ON THE 2ND DECEMBER, 1853.

An Act to amend the law of evidence in the Civil Courts of the East India Company in the Bengal Presidency.

1 to 18. [*Repeals ; who may be witnesses ; manner of summoning witnesses ; contents of summons ; how served ; person summoned to produce a document*].—*Repealed by Act X. of 1861, s. 1.*

* So much of this Act as is unrepealed, except so far as it is in force in Assam is repealed by the Repealing and Amending Act I. of 1903.

19. [*Witness not a party to suit not bound to produce his own title-deeds*].—*Repealed by Act I. of 1872, s. 2.*

20 to 25. [*Privileged communications; punishment for non-compliance with summons*].—*Repealed by Act X. of 1861, s. 1.*

26. Any person, whether a party to the suit or not, to whom
 Person absconding, &c., to a summons to attend and give evidence or
 avoid service of summons, produce a document shall be personally de-
 &c., liable for damages. livered, and who shall, without lawful excuse
 neglect, or refuse to obey such summons, or who shall be proved
 to have absconded or kept out of the way to avoid being served
 with such summons, and any person who, being in Court, and upon
 being required by the Court to give evidence or produce a docu-
 ment in his possession, shall, without lawful excuse, refuse to give
 evidence or sign his deposition, or to produce a document in his
 possession, shall* be liable to the party at whose request the
 summons shall have been issued, or at whose instance he shall be
 required to give evidence or produce the document, for all damages
 which he may sustain in consequence of such neglect or refusal, or
 of such absconding or keeping out of the way as aforesaid, to be
 recovered in civil action.

27 to 39. [*Property of person absconding liable for damages; costs and fines; appeal; postponement of trial; evidence to be taken down; evidence of females; power to require further evidence; false evidence of parties punishable; deposition by parties not to be used in their own favour; no appeal against order for summons of witnesses*].—*Repealed by Act X. of 1861, s. 1.*

40. [*Documents referred to as a material proof to be filed with pleadings*].—*Repealed by Act X. of 1855, s. 1.*

41 to 44. [*Local extent; commencement*].—*Repealed by Act X. of 1861, s. 1.*

* Here the words, "in addition to any proceedings under this Act," repealed by Act XII. of 1891, have been omitted.

ACT NO. XX. OF 1853.*

The Legal Practitioners Act, 1853.

PASSED ON THE 8TH DECEMBER, 1853.

An Act to amend the law relating to Pleaders in the Courts of the East India Company.

WHEREAS it is expedient to amend the law relating to Pleaders in the Courts of the East India Company ;
Preamble. It is enacted as follows:—

1. [*Repeal of enactments*].—*Repealed by the Repealing Act XIV. of 1870.*

2. No pleader shall be bound to attend in any of the Courts of the East India Company on any day fixed for the transaction of civil business, or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court, may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding.

Pleader not bound to attend Court except at hearing of cause in which he is employed.

3. Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject, however, to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter.

Right of Supreme Court attorneys to plead in all Sadr Courts

4. That part of section 4, Act No. 1 of 1846, which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the said Supreme Courts ; but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordi-

Barristers and attorneys of Supreme Courts not required to produce certificate of character, &c ,

but may plead in all subordinate Courts.

* Act XX. of 1853 has been declared to be in force in the Madras and Bombay Presidencies, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), ss. 4, 5.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the Scheduled District of Sindh.—See *Gazette of India*, Dec. 4, 1880, Pt. I., p. 672

It has been repealed in places to which the Pleaders, Mukhtars and Revenue Agents Act (XX. of 1865) is extended (see s. 3 of Act XX. of 1865), and in places to which the Legal Practitioners Act (XVIII. of 1879) applies (see s. 9 of Act IX. of 1884).

This title has been given by the Indian Short Titles Act (XIV. of 1897).

nate to the Sadr Courts, subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the Court is to be addressed or to any other matter connected with pleading therein.

ACT NO. XVI. OF 1854.*

Police, N.-W. Provinces.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH JULY, 1854.

An Act to amend Regulation XI. of 1831 of the Bengal Code.

WHEREAS the provisions of section 3 and section 7 of Regulation XI., 1831, have been found inconvenient; and whereas it is expedient that Regulation XI., 1831, as amended by this Act, should be extended to the whole of the Province of Benares; It is enacted as follows:—

1. [*Repeal of sections 3 and 7 of Bengal Regulation XI. of 1831*].—*Repealed by Act XIV. of 1870.*

2. Wherever any tahsildar shall have police-jurisdiction under the provisions of section 2 of the said Regulation XI., 1831, every darogha of police hereafter appointed within the local limits of the police-jurisdiction of such tahsildar shall be subordinate to, and subject to the control of, such tahsildar, in his capacity of chief police-thanadar.

3. Regulation XI., 1831, as amended, extended to Benares. to the whole of the Province of Benares, and all powers vested by the said Regulation in the Governor-General in Council may be exercised by the Lieutenant-Governor of the North-Western Provinces.

* Act XVI. of 1854 was declared to be in force in the whole of the North-Western Provinces, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 7. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in Kumaon and Garhwal, the Tarai Parganas the scheduled portion of the Mirzapur District, and Jaunsar Bawar.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

ACT NO. XXIV. OF 1854.

The Malabar War-knives Act, 1859.*

RECEIVED THE G.-G.'S ASSENT ON THE 28TH OCTOBER, 1854.

An Act to prohibit the possession of certain offensive weapons in Malabar.

WHEREAS it is expedient to prohibit the possession of certain offensive weapons in the District of Malabar in the Presidency of Fort St. George ; It is enacted as follows :—

Preamble.

1. The use of the Ayudha Katti or war-knife or of any similar offensive weapon, is hereby prohibited throughout the District of Malabar.†

2.† Any person who shall be found in possession of an Ayudha Katti or war-knife, or of a similar offensive weapon, or who shall purchase, or sell, or manufacture, or cause to be manufactured, any Ayudha Katti or war-knife, or similar weapon, shall be liable, on conviction before a Magistrate, to a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both ; and the said war-knife or weapon shall be confiscated.

3. It shall be lawful for the Magistrate of Malabar to cause search to be made by his police-officers, acting under his warrant, in any house or other place in which any Ayudha Katti or war-knife, or any similar offensive weapon, may be supposed to be contrary to this Act ; and any such Ayudha Katti or war-knife which shall be found may be seized and confiscated.

It shall also be competent to the Magistrate, at his discretion to delegate to any of his European assistants the powers conferred by this section.

Any person who shall resist or oppose such search or seizure or forcibly withstand any police-officer charged with such warrant, shall be liable to the same penalties as if such person had opposed or resisted the execution of a warrant for the search after stolen goods.

* This short title has been added by Act XI. of 1901.

† Certain words, repealed by Act XIV. of 1870 have here been omitted.

ACT NO. XXXI. OF 1854.*

The Conveyance of Land Act, 1854.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH DECEMBER, 1854.

An Act to simplify the modes of conveying land in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law applies† to simplify the modes of conveying land, and to exempt the purchasers of trust-property from the liability to see to the application of the purchase-money; It is enacted as follows:—

1. [*Real actions, fines and recoveries abolished*].—*Repealed by Act XIV. of 1870.*

2. Every tenant in tail or other owner of an estate of inheritance less than an estate in fee simple, either at law or in equity, in any lands or hereditaments, not being under any disability shall have power to dispose of such lands and hereditaments against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of his own, or to enlarge his said estate into an estate in fee simple, by any deed declaring an intention so to dispose of the said lands or hereditaments, or to enlarge his estate therein; and every tenant in tail or other owner of an estate of inheritance less than an estate in fee simple, who shall be under the disability of coverture, shall have

* Act XXXI. of 1854 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897). It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
West Jalpaiguri	...	...	Ditto	...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the district of Singhbhum	...	...	Ditto	...	1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	...	...	Ditto	...	1879, Pt. I., p. 383.
Jaunsar Bawar	...	...	Ditto	...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	...	Ditto	...	1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces	...	...	Ditto	...	1879, Pt. I., p. 771.
The District of Silhat	...	...	Ditto	...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)	...	...	Ditto	...	1897, Pt. I., p. 631.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, pt. I., p. 301.

† The words "to abolish real actions and also fines and common recoveries, and" have been repealed by the Repealing Act (XVI. of 1874).

power to dispose of or enlarge her said estate in manner aforesaid, by any deed declaring her intention so to do, and acknowledged by her as hereinafter mentioned :

Provided that every disposition under this section shall be subject to the rights of all persons in respect of estates prior to the estate tail or other estate of inheritance which is the subject of such disposition, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made.

3. Every married woman who, either alone, or jointly with her husband, is possessed of, or entitled to, any estate or interest in, or any power to be exercised over, any lands or hereditaments, which, but for the passing of this Act, she might have disposed of or extinguished by levying a fine, or suffering a recovery, or by joining in either of such assurances, shall have power by deed, to be acknowledged by her as hereinafter mentioned, to dispose of, release, surrender, or extinguish, any such estate, interest, or power, as fully and effectually as if she were an unmarried woman.*

Ms. 2 & 3 to apply to money subject to be invested in land.

4. The provisions of the last two preceding sections shall, so far as circumstances will admit, apply to money subject to be invested in lands or other hereditaments.

5. No deed to be executed by a married woman under the provisions hereinbefore contained shall, so far as regards the interest of such married woman, be valid or effectual unless her husband concur therein, nor unless the deed be acknowledged in manner hereinafter prescribed before a Judge of one of Her Majesty's Supreme Courts, or before a Judge or other covenanted officer of the East India Company exercising civil jurisdiction in the place wherein such deed shall be acknowledged, or before some Commissioner appointed either specially for the occasion, or appointed as a permanent Commissioner by one of Her Majesty's said Courts to take such acknowledgments.†

6. If the husband of any married woman, desirous of enlarging, passing, or destroying any estate, interest, or power, by a deed to be acknowledged by her under this Act, shall be a lunatic, idiot, or of unsound mind, whether he shall have been found such by inquisition or not, or from any other cause shall be incapable of executing a deed, or if his residence shall not be known, or if he shall be in prison, or living apart from his wife either by mutual consent or

* See 3 & 4 Wm. IV., c. 74, s. 77

† See 3 & 4 Wm. IV., c. 74, s. 79.

by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatever, it shall be lawful for any of Her Majesty's said Courts, by an order to be made in a summary way upon the application of such married woman, and upon such evidence as to the Court shall seem meet, to dispense with the concurrence of her husband in the deed so to be acknowledged; and any deed to be executed or acknowledged by her in pursuance of such order shall (but without prejudice to the rights of her husband as then existing, independently of this Act) be as valid and effectual as if he had concurred therein.*

7. It shall be lawful for any of Her Majesty's said Courts to appoint by its order, under the seal of the Supreme Courts may appoint Commissioners to take such acknowledgments. Court, to be published in the Government Gazette or otherwise as the Court shall direct, permanent Commissioners either by name or office, and to appoint from time to time, under special commissions, special Commissioners, any one of whom shall be authorized and empowered unless the act is directed to be done before more than one, to take the acknowledgment of any deed by any married woman, who, by reason of her place of residence, or ill-health, or other sufficient cause, shall be unable to make such acknowledgment before one of the Judges or other officers described in the preceding section.

8. Every such Judge, officer or Commissioner as aforesaid, before he shall receive the acknowledgment by any married woman of any deed to be acknowledged by her under this Act, shall examine her apart from her husband touching her knowledge of such deed, and shall ascertain whether she understands its object and freely and voluntarily consents to the same, and unless she appears to understand its object, and freely and voluntarily to consent to such deed, he shall not permit her to acknowledge the same, and in such case, such deed, so far as relates to the execution thereof by such married woman, shall be void.†

9. Every Judge, officer, or Commissioner taking such acknowledgment under this Act, shall, at the time of taking the same, sign a memorandum to be endorsed on or written at the foot, or in the margin of such deed, which memorandum shall be to the following effect, namely, "This deed marked (), was this day produced before me and acknowledged by therein named, to be her act and deed, previous to which acknowledgment the said was examined by me separately and apart from her husband, touching her knowledge of the contents of the said deed, and her consent thereto, and appeared to understand the same, and declared the same to be freely and voluntarily executed by her."‡

* See 3 & 4 Wm. IV., c. 74, s. 91.

† See 3 & 4 Wm. IV., c. 74, s. 80.

‡ See 3 & 4 Wm. IV., c. 74, s. 84.

10. Every deed executed by a married woman, and hereby required to be acknowledged, shall, so far as regards the interest of such married woman take effect only from the time of the acknowledgment thereof.

11. It shall not be necessary for any person producing a deed so acknowledged in any Court of Justice to prove the handwriting or authority of the Judge or other officer, or the Commissioner taking such acknowledgment; but if such memorandum purports to have been in substance regularly made and signed, the deed shall be presumed to have been duly acknowledged by the party until the contrary is shown.

12. Nothing in this Act contained shall abridge, extend, or affect the powers of alienation or disposition which any married woman might have exercised over any property or rights otherwise than by levying a fine or suffering a recovery, or by joining in one of such assurances before the passing of this Act.

13. In any deed or will executed after this Act comes into operation, and disposing of immoveable property situate in the territories* under the Government of India, wherein contingent estates are limited without the appointment of any trustees to preserve such contingent estates, the same shall be, to all intents and purposes, as effectually protected by the law as if such trustees had been duly appointed.

14. Any estate or interest in immoveable property, situate within the said territories, whether in possession, remainder, or reversion, may, in addition to any other mode of conveyance or release which is now valid, be conveyed, passed, or released by a simple deed, whether such deed operate under the Statute of Uses or not.†

15. No conveyance of any kind shall operate to destroy, impair or affect, any estate or interest which the conveying party has no right to destroy, impair, or affect, or beyond the extent to which he may impair or affect the same.‡

16. It shall not be necessary in any deed relating to immoveable property situate within the said territories, to be executed after the passing of this Act, to add words of limitation to heirs when the intention is to give the absolute interest to a person and his heirs general; but a gift, grant, or other conveyance of immoveable property to, or in favour of, any person, shall be taken to

* See Act XII, of 1876.

† See 8 & 9 Vict., c. 106, s. 2

‡ See 8 & 9 Vict., c. 106, s. 4.

give him the entire and absolute interest in the nature of an estate in fee simple, unless such construction is rendered inadmissible by the other contents of the deed; and when, in any deed or will executed after the passing of this Act, any

Estate limited to heirs shall not unite with prior life-estate. property is given to a person for life or for other freehold interest, and afterwards, in the same deed or will, is limited to his heirs or heir special, the estates shall not unite, but the limitation to the heirs shall be a limitation of an estate to be taken by the heirs by purchase.

17. When any property is sold, the proceeds of which are subject to any trust, the *bonâ-fide* purchaser required to see to application of trust-money. of the property shall not in any case be bound to see to the application of the purchase-money to the purposes of the trust.

Act to apply only to cases governed by English law. 18. Nothing in this Act contained shall extend to any case to which the English law is not applicable,

ACT NO. X. of 1855.

Recusant Witnesses.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH, 1855.

*An Act to amend the law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay.**

10.† Any person, whether a party to the suit or not, to whom Recusant witnesses liable a summons to attend and give evidence or for damages in civil suit. produce a document shall be personally delivered, and who shall, without lawful excuse, neglect or refuse to obey such summons, or who shall be proved to have absconded, or kept out of the way to avoid being served with such summons, and any person who, being in Court, and upon being required by the Court to give evidence or produce a document in his possession, shall, without lawful excuse, refuse to give evidence or sign his deposition, or to produce a document in his possession shall, in addition to any proceedings to which he would otherwise be subject, be liable to the party at whose request the summons shall have been issued, or at whose instance he shall be required to give evidence or produce the document, for all damages which he may sustain in consequence of such neglect or refusal, or of such absconding or keeping out of the way as aforesaid, to be recovered in a civil action.

* Here the words, "and to amend the provisions of section 40, Act XIX. of 1853," repealed by Act XII. of 1891, Sch. I., have been omitted.

† The whole Act, except ss. 9 and 10, was repealed by Act X. of 1861; and s. 9 was repealed by Act XII. of 1873. S. 10 has been declared to be in force in the whole of the Madras and Bombay Presidencies, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

ACT NO. XI. OF 1855.*

The Mesne-profits and Improvements Act, 1855.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH MARCH, 1855.

An Act relating to "mesne-profits and" to improvements made by holders under defective titles in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law is applicable, *to limit the liability for mesne-profits and to secure to bonâ-fide holders* under defective titles the value of improvements made by them; It is enacted as follows :

1. No person shall be chargeable with any rents or profits of any immovable property which he has *bonâ-fide* paid over to any person of whom he *bonâ-fide* held the same, notwithstanding it may alterwards appear that the person to whom such payment was made had no right to receive such rents or profits.

2. If any person shall erect any building or make any improvement upon any lands held by him *bonâ-fide* in the belief that he had an estate in fee simple, or other absolute estate, and such person, his heirs or assigns, or his or their

* Act XI. of 1855 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh ...	...	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
West Jalpaiguri ...	...	Ditto	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum ...	...	Ditto	1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District ...	...	Ditto	1879, Pt. I., p. 383.
Jaunsar Bawar ...	...	Ditto	1879, Pt. I., p. 382.
The Districts of Hazara Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	...	Ditto	1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces ...	...	Ditto	1879, Pt. I., p. 771.
The District of Silhat ...	...	Ditto	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills) ...	...	Ditto	1897, Pt. I., p. 299.

It has been extended, under the same Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

The words quoted in the title and in italics in the preamble, together with s. 1 are repealed in places to which the Transfer of Property Act, extends or is extended. See the Transfer of Property Act (IV. of 1882), s. 2.

under-tenants, be evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his heirs or assigns, shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the person causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement:

Provided that the amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction.

NOTE.

Where a person built a house on a site to which he had no right without the zeminder's permission:—*Held* that the claim by latter for possession of the land and removal of the building was not barred provided that the erection was effected without his knowledge.—*Gujadhar v. Nandram*, 1 Agra 244.

Act to apply only to cases governed by English law. 3. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

ACT NO. XII. OF 1855.*

The Legal Representatives' Suits Act, 1855.

RECEIVED THE G.G.'s ASSENT ON THE 27TH MARCH, 1855.

An Act to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs.

WHEREAS it is expedient to enable executors, administrators, or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against

Preamble.

* See 3 & 4 Wm. IV., c. 42, s. 2.

Act XII. of 1855 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has also been declared in force—

in Angul and the Khondmals by Reg. (I. of 1894), s. 3.

in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3;

and in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
West Jalpaiguri	...	Ditto	...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum	...	Ditto	...	1881, Pt. I., p. 504.

such executors, administrators, or representatives; It is enacted as follows:—

1. An action may be maintained by the executors, administrators, or representatives of any person deceased, for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such persons, so as such wrong shall have been committed within one year before his death; and the damages, when recovered, shall be part of the personal estate of such person:

and further, an action may be maintained against the executors or administrators, or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death; and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

NOTE.

Act XII. of 1855, which deals with maintenance of cases by executors, administrators or representatives of a deceased person for recovery of certain moneys, applies to cases where the person injured might, in his lifetime, have maintained, but had not instituted an action.—*Krishna Behary v. The Calcutta Corporation*, 31 C. 406=8 C. W. N. 329. But suits instituted against wrong-doer abates at his death, since cl. 2 of s. 1 has no application to an action commenced against the wrong-doer.—28 M 487; see also 13 C. 677. A suit is maintainable against the personal representatives for a wrong done by the deceased within a year of his death, although such wrong be of a purely personal character, as for example defamation. — 2 Hay, 325=Marshall 344. Wrongs committed by a deceased person survive to his heirs and this Act only relates to wrongs which do not survive to the representative of a deceased person.—1 W. R. 251.

2. No action commenced under the provisions of this Act

Death of either party not to abate suit. shall abate by reason of the death of either party, but the same may be continued by or

The scheduled portion of the Mirzapur District ...	See <i>Gazette of India</i> ...	1879, Pt. I., p. 283
Jaunsar Bawar ...	Ditto ...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	Ditto ...	1886, Pt. I., p. 48.
The District of Lahaul ...	Ditto ...	1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces ...	Ditto ...	1879, Pt. I., p. 771.
The District of Silhat ...	Ditto ...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills) ...	Ditto ...	1897, Pt. I., p. 299.
The Porahat Estate in the Singbhum District ...	Ditto ...	1897, Pt. I., p. 1059.
It has been extended, under the same Act, to the following Scheduled Districts:—		
Kumaon and Garhwal ...	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
The North-Western Provinces Tarai ...	Ditto ...	1876, Pt. I., p. 505.

against the executors, administrators, or representatives of the party deceased: Provided that, in any case in which any such action shall be continued against the executors, administrators, or representatives of a deceased party, such executors, administrators, or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

ACT NO. XIII. OF 1855.*

The Indian Fatal Accidents Act, 1855.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH MARCH, 1855.

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the

* Act XIII. of 1855 has been copied from 9 & 10 Vict., c. 93 (Lord Campbell's Act).

This title has been given by the Indian Short Titles Act (XIV. of 1897). It has been declared to be in force in the whole of British India, except the Scheduled Districts by the Laws Local Extent Act (XV. of 1874), s. 3.

It has also been declared in force—

in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3;

in Angul and the Khondmals by Reg. (I. of 1894), s. 3;

in the Arakan Hill District by Reg. (IX. of 1874), s. 3; and

in Upper Burma (except the Shan States) by Act (XIII. of 1898) s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
--------------	---------------------------------	-----------------------

West Jalpaiguri	Ditto ...	1881, Pt. I., p. 74.
------------------------	-----------	----------------------

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Sing- bhum	Ditto ...	1881, Pt. I., p. 504.
--	-----------	-----------------------

The scheduled portion of the Mirzapur District	Ditto ...	1870, Pt. I., p. 383.
--	-----------	-----------------------

Jaunsar Bawar	Ditto ...	1879, Pt. I., p. 382.
----------------------	-----------	-----------------------

The Scheduled Districts of the Punjab	Ditto ...	1881, Pt. I., p. 483.
---	-----------	-----------------------

The Scheduled Districts of the Central Provinces	Ditto ...	1879, Pt. I., p. 771.
--	-----------	-----------------------

The District of Silhat	Ditto ...	1879, Pt. I., p. 631.
-------------------------------	-----------	-----------------------

The rest of Assam (except the North Lushai Hills)	Ditto ...	1897, Pt. I., p. 299.
---	-----------	-----------------------

The Porahat Estates in the Sing- bhum District	Ditto ...	1897, Pt. I., p. 1059.
--	-----------	------------------------

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumaon and Garhwal	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
---------------------------	---------------------------------	-----------------------

The North-Western Provinces Tarai	Ditto ...	1876, Pt. I., p. 505.
---	-----------	-----------------------

death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him ; It is enacted as follows :—

1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default, is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

* Every such action or suit shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased ;

and in every such action, the Court may give such damages† as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

NOTES.

In an action under this Act no sum can be awarded in respect of funeral expenses, whether for removal or disposal of the body or for outlay for cremation or obsequial purposes.—(O. J.) I. L. R. 16 Bom. 254. As regards modes of assessing damages *vide*, I. A. 60 (F. B.) no compensation can be allowed for mental sufferings—4 M. L. T. 238. The right to claim compensation* is given by this Act, where there are executors or administrators they are entitled to sue. In the absence of them suit may be instituted by his representatives. But only one suit is maintainable. The term representative applies also to European and Eurasians.—28 M. 479—15 M. L. J. 363. See also 85 P. R. 1894 ; 56 P. R. 1905.

Under s. 1 legal liability alone is not the test of injury, in respect of which damages may be recovered, but the reasonable expectation of pecuniary advantage by the deceased relative remaining alive may be taken into account, and damages given in respect of that expectation, if it be disappointed and the probable pecuniary loss thereby incurred.—20 Ind. Cas. 425. See also 26 P. W. R. 1914. Where son adopted after the death of the deceased was not considered as son of the deceased. An undivided brother of the deceased cannot claim compensation.—106 P. R. 1915.

* Certain words after this having been omitted having been repealed by the Repealing and Amending Act X of 1914.

† As to the measure of damages under this Act, see *Vinayak Raghunath v. G. I. P. Ry. Co.*, 7 Bom. O. C. J. 113 ; *Ratanbai v. G. I. P. Ry.*, *ib.*, 120 ; S. C. on appeal, 8 *ib.*, 130.

2. Provided always that not more than one action or suit shall be brought for, and in respect of, the same subject-matter of complaint; provided that, Not more than one suit to be brought. in any such action or suit, the executor, administrator, or representative of the deceased may insert a claim for, Claim for loss to estate may be added. and recover any pecuniary loss to, the estate of the deceased occasioned by such wrongful act, neglect, or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

3. The plaintiff in any such action or suit shall give a full particular of the person or persons for whom, Plaintiff shall deliver particulars, &c. or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

4. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not Interpretation-clause. excluded by the context or by the nature of the subject-matter, that is to say* the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother† and grandfather and grandmother; and the word "child" shall include son‡ and daughter, and grandson and granddaughter, and step-son and step-daughter.

ACT NO. XXI. OF 1855.‡

The Madras Minors Act, 1855.¶

RECEIVED THE G.-G.'S ASSENT ON THE 9TH AUGUST, 1855.

An Act for making better provision for the education of male minors and the marriage of male and female minors subject to the superintendence of the Court of Wards in the Presidency of Fort St. George.

WHEREAS the existing laws are found insufficient to insure the proper education of male minors subject to the superintendence of the Court of Wards, Preamble. and it is expedient to make further and better provision for the education of such persons and § their younger brothers, and for the exercise of a control over the marriages of all minors under the superintendence of the Court of Wards; It is enacted as follows :—

* Certain words after this have been omitted having been repealed by the Repealing and Amending Act X. of 1914.

† Step-father and step mother are designedly omitted.

‡ As to adopted sons, see 7 Bom. O. C. J. 113.

§ Act XXI. of 1855 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4. As to the extension of the provisions of Act (XXI. of 1855) to minors not subject to the Court of Wards, see Act XIV. of 1858.

¶ This Short title has been added by Act XI. of 1901.

1. The general superintendence and control of the education of every male minor, whose property has been or shall be brought under the management of the Court of Wards, in and for any part of the Presidency of Fort St. George, by virtue of any Act or Regulation which now is or hereafter shall be in force, is hereby vested in the Collector of Revenue, acting under the said Court of Wards, in the zilla or district wherein such minor's estate is situate; or, if such minor is possessed of immoveable property in different districts, in such one of the Collectors of Revenue of such districts as the said Court of Wards shall select.

2. It shall be lawful for every Collector of Revenue, in whom the superintendence of the education of any minor is vested, by this Act, to direct that such minor shall reside, either with or without his guardian, at the sadr station of the district, or at any other place within the said Presidency, and shall attend for the purposes of education such school or college as to the said Collector may seem expedient, and to make such provision as may be necessary for the proper care and suitable maintenance of the said minor whilst attending such school or college.

3. If it shall appear to the Collector inexpedient to place any such minor at a school or college, he shall or, in certain cases, by private tutor. cause such minor to be educated by a private tutor, properly qualified, either at the family-residence of such minor, or at the sadr station, or elsewhere within the said Presidency, and in that case also the Collector shall have power to determine from time to time the place of residence of such minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

4. All charges and expenses which may be incurred on account of any male minor ward under the provisions of this Act, for college or school-fees, or for other charges of tuition or education, or by reason of his residence in any place other than his own home, or otherwise, shall be defrayed from the profits of his estate, in the same manner as other expenses incurred under the authority or with the sanction of the Court of Wards.

5. It shall be lawful for the Court of Wards, on the application of a Collector, to remove from office any guardian who shall neglect or refuse to obey, or shall evade compliance with, any orders passed, or directions given, by such Collector under the provisions of this Act, and to cause a new guardian to be appointed in his place, whether the person so removed shall have been first invested with the guardianship of the minor upon the nomination of a Collector acting under the Court

of Wards, or by a testamentary appointment confirmed by the Court of Wards.

6. The guardian so removed shall, notwithstanding his removal, continue liable to account to the Collector for his receipts and disbursements during the period of his guardianship, and every guardian appointed in the place of a guardian so removed shall be chosen in the same way, and shall have the same rights and powers, and be subject to the same responsibilities, as persons originally appointed to be guardians of minors by a Collector of Revenue acting under the Court of Wards.

7. The right to the custody of the person of any male minor whose property is under the management of the Court of Wards is hereby vested in the person appointed with the sanction of the Court of Wards, either originally or upon the removal of a former guardian, to be the guardian of such minor, or, in the absence of any such person, the Collector of Revenue having the superintendence of the education of such minor under the provisions of this Act.

8. Whenever a minor whose property is under the management of the Court of Wards has a younger brother or brothers entitled to maintenance at the charge of the estate, all the powers and provisions hereinbefore contained for promoting the education of such minor are hereby declared and made applicable to such younger brother or brothers.

9. Whoever knowingly aids or abets the marriage of any minor whose property is under the superintendence of the Court of Wards, or the marriage of a younger brother or sister of such minor, without the leave of the Collector of Revenue acting under the Court of Wards to such marriage first had and obtained, shall, on conviction before a Court of Session, upon the prosecution of such Collector, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding the term of six months, with or without hard labour.

10. All orders and proceedings of a Collector under the provisions of this Act shall be subject to the revision of the Court of Wards, and every person aggrieved by any such order or proceeding may prefer an appeal therefrom to the Court of Wards.

Act NO. XXIII. OF 1855.*

The Mortgaged Estates Administration Act, 1855.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH AUGUST, 1855.

An Act to amend the Law relating to the administration of the Estates of deceased persons charged with money by way of Mortgage.

WHEREAS it is expedient that the law under which the real and personal assets of deceased persons subject to the English law are administered, should be amended; It is enacted as follows :—

1. If any person shall die seised of, or entitled to, any estate Heir and devisee of land or interest in any land or other hereditaments within the territories in the possession of, and under the government of, the East India Company, which shall, at the time of his death, be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will or deed or other document, have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised, shall not be entitled to have the mortgage-debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the

* Act XXIII. of 1855 is based on 17 & 18 Vict., c. 113. It has been repealed, except as to descents or devises occurring or made before 1st January 1866, by Act VIII. of 1868.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

Act XXIII. of 1855 has been declared, as regards such descents and devises, to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

West Jalpaiguri	See <i>Gazette of India</i> ... 1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan, in the District of Singhbhum	Ditto ... 1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	Ditto ... 1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan ...	Ditto ... 1886, Pt. I., p. 48.
The District of Silhat	Ditto ... 1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills	Ditto ... 1897 Pt. I., p. 209.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1836 Pt. I., p. 301.

As to devises made on or after 1st January 1865, see the Indian Succession Act (X. of 1865), s. 154, *infra*

deceased person, be primarily liable to the payment of all mortgage-debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage-debts charged on the whole thereof :

Provided always that nothing herein contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage-debt, either out of the personal estate of the person so dying as aforesaid or otherwise :

Provided also that nothing herein contained shall affect the rights of any person claiming under, or by virtue of, any will, deed, or document already made, or to be made, before this Act shall have come into operation.

ACT NO. XXIV. OF 1855.*

The Penal Servitude Act, 1855

RECEIVED THE G.-G.'S ASSENT ON THE 13TH AUGUST, 1855.

An Act to substitute Penal Servitude for the Punishment of Transportation in respect of European and American Convicts.†

WHEREAS by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of transportation ;† It is enacted as follows :—

* Act XXIV. of 1855 has been declared to be in force in the whole of British India except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has also been declared in force—

in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899) ; s. 3 ;

in British Baluchistan by Reg. (I. of 1890), s. 3 ; and

in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	...	...	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
Aden	...	...	Ditto	... 1879, Pt. I., p. 434.
West Jhalpaiguri and the Western Dvdrs	...	...	Ditto	... 1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	...	Ditto	... 1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	...	...	Ditto	... 1879, Pt. I., p. 383.
Jaunsar Bawar	...	...	Ditto	... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	...	Ditto	... 1886, Pt. I., p. 48.

1.‡ No European or American shall be liable to be sentenced or ordered, by any Court within the territories under the Government of India, to be transported.

2. Any person who, but for the passing of this Act, would by any law now in force, or which may hereafter be in force in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as hereinafter mentioned.

The terms of penal servitude to be awarded by any sentence or order instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows (that is to say):—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

The Scheduled Districts of the Central Provinces ...	... See <i>Gazette of India</i>	1879, Pt. I, p. 771.
The District of Silhat ...	Ditto	... 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills) ...	Ditto	... 1897, Pt. I, p. 299.
The Porahat Estate in the Singbham District ...	Ditto	... 1897, Pt. I, p. 1059.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I, p. 301.

‡ Here certain words, which were repealed by Act XII. of 1891, have been omitted.
 † In s. 1, certain words, which were repealed by Acts XVI. of 1874 and XII., of 1876, have been omitted.

3. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

4. If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

5, 6, 7. *[Power to substitute penal servitude for transportation. Mode of dealing with person under sentence of penal servitude. Application of enactments respecting transportation and imprisonment with hard labour].—Repealed by Act V. of 1871.*

8. *[Removal of convicts under sentence of imprisonment from one prison to another].—Repealed by Act XII. of 1867 and Act X. of 1914.*

9, 10, 11, 12. *[Licenses to convicts under sentence of penal servitude to be at large].—Repealed by Act V. of 1871.*

13. Nothing in this Act is intended to alter or affect the provisions of the 12 and 13 Victoria, chapter 43,* or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

14. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

15. The word "European," as used in this Act, shall be understood to include any person usually designated a European British subject. Words in the singular number or the masculine gender shall be understood to include several persons, as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

* "An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regimental debts and the distribution of effects of officers and soldiers dying in the service."—Repealed by 20 & 21 Vict., c. 66.

ACT NO. XXVIII. OF 1855.*

The Usury Laws Repeal Act, 1855.

RECEIVED THE G.G.'S ASSENT ON THE 19TH SEPTEMBER, 1855

An Act for the repeal of the Usury Laws.†

Preamble.

WHEREAS it is expedient to repeal the laws now in force relating to Usury;‡ It is enacted as follows:—

1. [*Repeal of enactments*].—*Repealed by Act XIV. of 1870.*

NOTE.—1 C. 92; 36 P. R. 1894; 5 W. R. 51; 99 P. R. 1894.

* Act XXVIII. of 1855 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897). It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	See <i>Gazette of India.</i>	... 1880, Pt. I., p. 672.
West Jalpaiguri, the Western Dvars, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District	...	Ditto	... 1881, Pt. I., p. 74.
The District of Hazaribagh	...	Ditto	... 1881, Pt. I., p. 507.
Ditto Lohardaga	...	Ditto	... 1881, Pt. I., p. 508.
Ditto Manbhum	...	Ditto	... 1881, Pt. I., p. 509.
Pargana Dhalbhum in the District of Singhbhum	...	Ditto	... 1881, Pt. I., p. 510.
The scheduled portion of the Mirzapur District	...	Ditto	... 1879, Pt. I., p. 383.
Jaunsar Bawar	...	Ditto	... 1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	Ditto	... 1886, Pt. I., p. 48.
The District of Lahaul	...	Ditto	... 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	...	Ditto	... 1879, Pt. I., p. 771.
The District of Silhat	...	Ditto	... 1879, Pt. I., p. 631.
The Districts of Kamrup, Naugong, Darrang, Sib-sagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Kachar (excluding the North Kachar Hills)	...	Ditto	... 1878, Pt. I., p. 533.
It has been extended, under the same Act, to the following Scheduled Districts:—	...	Ditto	... 1876, Pt. I., p. 606.
Kumaon and Garhwal	...		
The North-Western Provinces Tarai	...	Ditto	... 1876, Pt. I., p. 505.

† See s. Mad. 453: 10 Bom. 382.

‡ This Act does not affect the Hindu or Muhammadan law as to interest.—See 3 Ben. O. C. J. 130 (*contra*, 5 Ben. 500), 3 Bom. A. C. J. 23; 7 Bom. O. C. J. 19; 10 Bom. 385.

2. In any suit in which interest is recoverable, the amount
 Rate of interest to be decreed by Courts. shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties;* and if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

NOTE.

This Act repeals the Mahomedan Laws relating to usury—5 B. L. R. 500, *see* also 12 W. R. O. C. 9; 20 W. R. 317. This Act does not affect the rule of *damdupat*—14 C. 781 but *see* 9 C. 845; A. W. N. 1882, 60; 25 M. 343; 29 C. 823. Where the interest was exorbitant, contract rate to be allowed up to the date of the decree—3 M. 125. *See* also 9 C. 689; 2 C. W. N. 234; 9 C. 871; 110 P. R. 1908; 6 N. W. P. 258, 14 C. 248; 13 C. 200; 14 W. R. 450; 7 A. L. J. 787; 5 A. 419; 71 W. R. 19 (P. C.); 12 W. R. 227.

3. Whenever a Court shall direct that a judgment or decree
 Rate of interest upon a judgment or decree. shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

4. A mortgage or other contract for the loan of money, by
 Contract for usufruct of property, in lieu of interest. which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

5. Whenever, under the Regulations of the Bengal Code,† a
 Amount of interest to be deposited in certain cases of conditional sales under Bengal Regulations deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated, and interest be payable under the terms of the contract, at the rate of twelve per centum per annum: Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

6. In any case in which an adjustment of accounts may become
 Rate of interest on future adjustments of accounts necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated, and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

* *See* 4 Bom. A. C. J. 202.

† *See* Ben. Reg. I of 1798, s. 2.

ACT NO. XXXVII. OF 1855.*

The Santhal Parganas Act, 1855.†

RECEIVED THE G-G'S ASSENT ON THE 22ND DECEMBER, 1855.

An Act to remove from the operation of the general laws and regulations certain districts inhabited by Santhals and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose.

WHEREAS the general Regulations and Acts of Government, now in force in the Presidency of Bengal, are not adapted to the uncivilized race of people called Santhals, and it is therefore expedient to remove from the operation of such laws the district called the Damin-i-Koh, and other districts which are inhabited principally by that tribe; It is enacted as follows :—

1. *Clause 1.*—The districts described in the schedule to this Act are hereby removed from the operation of the general Regulations of the Bengal Code and of the laws passed by the Governor-General of India in Council, except so far as is hereinafter provided; and no law which shall hereafter be passed by the Governor-General of India in Council shall be deemed to extend to any part of the said districts, unless the same shall be specially named therein:

Provided that nothing herein contained shall remove any part of the said districts from the operation of Regulation X. of 1804 of the Bengal Code; nor shall this Act affect any revenue-settlement, nor any law relating to the recovery of permanently-settled land-revenue due under the same, nor any law relating to the sale of lands for arrears of revenue, or relating to patni-taluqs or to the sale thereof for arrears of rent, nor any law relating to mutations or batwara, or to any other matter to which the Lieutenant-Governor of Bengal shall at any time notify in the *Calcutta Gazette* that the general laws and Regulations shall extend.

Clause 2.—The said districts shall be placed under the superintendence and jurisdiction of an officer or officers to be appointed in that behalf by the Lieutenant-Governor of Bengal, and such officer or officers shall be subject to the directions and control of the said Lieutenant-Governor.

* Sections 1, 2, and 3 of Act XXXVII. of 1855 have been declared in force in the Santhal Parganas by Reg. III. of 1872, s. 3, as amended by Reg. III of 1899 s. 3. It will be repealed by Act XIV. of 1874 when that Act is brought into force in the Santhal Parganas.

† This short title has been added by the Repealing and Amending Act I. of 1903.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

2. The administration of civil and criminal justice and the Administration of justice and collection of the revenue, not being permanently-settled land-revenue within the said districts, are hereby vested in the officer or officers to be so appointed:

Provided that all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the general laws and regulations in the same manner as if this Act had not been passed:

Provided also that all permanently-settled land-revenue shall be collected and paid at the same places and in the same manner as if this Act had not been passed.

NOTE.

As regards powers of Sub-Deputy Collectors in Santhal Parganas, vide *Calcutta Gazette*,—1873, Pt. I., p. 935.

3. In the administration of civil and criminal justice, the Administration of civil and criminal justice. officer or officers appointed under this Act shall be guided by the spirit and principle of the civil and criminal laws administered in the Courts of the East India Company in the Presidency of Bengal, but shall not be bound to take the fatwa of a law-officer; and he or they may hold his or their Courts either within the said district or at any place or places that may be appointed for that purpose by the said Lieutenant-Governor; and any person liable to be imprisoned in any civil or criminal jail may be imprisoned in any civil or criminal jail, as the case may be, which the said Lieutenant-Governor may order, whether the same be in or out of the said district.

4. *Clause 1.*—All decisions in civil suits and sentences in criminal cases, which shall be passed by such officer or officers, to the extent of the powers which may be from time to time conferred upon them respectively by the Lieutenant-Governor of Bengal, according to the provisions of this Act, shall be final:

Provided that no sentence of death passed by any such officer shall be carried into effect until it shall have been confirmed by the Sadr Court, and provided also that it shall be lawful for the said Lieutenant-Governor to direct that an appeal shall lie in any class of civil suits or criminal trials from any officer appointed under this Act to any other officer appointed under the same, and also to direct the officer or officers appointed under this Act to refer to the Sadr Court for sentence any class of criminal trials.

Confirmation of death-sentence. Appeal.

Clause 2.—Upon the receipt of any criminal trial referred to the Sadr Court under clause (1) of this section, the said Court shall, without submitting the proceedings for the fatwa of their law-officer, proceed to pass final judgment or such other order as may seem to the Court requisite and proper, in the same manner as if the trial had been referred in ordinary course by a Sessions Judge; and in any case in which sentence of death passed by an officer under this Act shall be transmitted to the Sadr Court for confirmation, the said Court may either confirm the same or pass such other judgment warranted by law as may appear to the said Court to be just and proper.

5. Nothing in this Act shall alter the laws now in force with respect to the amenability of European British subjects to any Court or officer for any act of a criminal nature committed within the district.

Saving of laws relating to European British subjects.

SCHEDULE.*

The Damin-i-Koh.

So much of Pergunnah Bhagalpur and of Pergunnah Satiyari as lies east of the Gerua Nadi and south of a line drawn eastward from Hamza Chak to the village of Dighi.

ZILA BHAGALPUR.	{	Pergunnah Tiliyagarhi.	{	Except such parts of them as are now or may hereafter be situate on the left bank of the main stream of the Ganges, so that in any change in the course of the river the main stream shall be the boundary.
		" Jamuni.		
		" Chituliya.		
		" Kankjaul.		
		" Bahadarpur.		
		" Akbarnagar.		
		" Inayatnagar.		
		" Makrain.		
		" Sultanganj.		

ZILA BHAGALPUR.	{	Pergunnah Ambar.	{	Except such detached villages as lie within the general boundaries of pergunnahs not mentioned in this schedule.
		" Sultanabad.		
		" Godda.		
		" Amolmotiya.		
		" Pasai.		
		" Handwa.		
		Tappa Manihari.		
		" Belpatta.		

ZILA BERRHOOM.	{	Pergunnah Pabbiya.	{	
		Tappa Sarath Deogarh.		
		" Kandit Karaiya.		
		" Muhammadabad.		
		Such part of Pergunnah Darin Maul- eshwar as lies north of the Chilla or Chandan Ghât Nala.		

Such detached portions of other pergunnahs and tappas as lie within the general boundaries of any of the above-mentioned pergunnahs and tappas.

Such portions of pergunnahs belonging to Maldah and Purneah below the village of Khidipur in Pergunnah Tiliyagarhi, as are now or may hereafter be situate on the right bank of the main stream of the Ganges.

* This schedule has been substituted by Act X. of 1857, s. 1—see *infra*.

ACT NO. IX. OF 1856.*

The Indian Bills of Lading Act, 1856.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH APRIL, 1856.

An Act to amend the Law relating to Bills of Lading.

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper, or owner, and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ-fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid; It is enacted as follows:—

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*,† or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

* Based on 18 & 19 Vict., c. 111.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

Act IX. of 1856 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Law-Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh ...	...	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
West Jalpaiguri ...	...	Ditto ...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum	...	Ditto ...	1881, Pt. I., p. 504.
The District of Silhat ...	...	Ditto ...	1871, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills ...)	...	Ditto ...	1897, Pt. I., p. 299

† See Act IX. of 1872, ss 99-106.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board:

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims.

ACT NO. XI. OF 1856.*

The European Deserters' Act, 1856.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH APRIL, 1876.

An Act for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty in India.

WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land Forces in the service of Her

Preamble.

* Act XI of 1856 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has also been declared to be in force in the Santhal Parganas by Reg. (III. of 1872), s. 3 as amended by Reg. (III. of 1899), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
-------	-----	-----	---------------------------------	-----------------------

Aden	Ditto	...	1879, Pt. I., p. 434.
------	-----	-----	-------	-----	-----------------------

West Jalpaiguri	Ditto	...	1881, Pt. I., p. 74.
-----------------	-----	-----	-------	-----	----------------------

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	Ditto	...	1881, Pt. I., p. 504.
--	-----	-------	-----	-----------------------

The scheduled portion of the Mirzapur District	...	Ditto	...	1879, Pt. I., p. 383.
--	-----	-------	-----	-----------------------

Jaunsar Bawar	...	Ditto	...	1879, Pt. I., p. 382.
---------------	-----	-------	-----	-----------------------

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	Ditto	...	1886, Pt. I., p. 48.
--	-----	-------	-----	----------------------

The Scheduled Districts of the Central Provinces	...	Ditto	...	1879, Pt. I., p. 771.
--	-----	-------	-----	-----------------------

The District of Silhat	...	Ditto	...	1879, Pt. I., p. 631.
------------------------	-----	-------	-----	-----------------------

The rest of Assam (except the North Lushai Hills)	...	Ditto	...	1897, Pt. I. p. 299.
---	-----	-------	-----	----------------------

It has been extended, under the same Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I, p. 506.

It has been declared, under the same Act not to be in force in the Scheduled District of Labaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

Majesty in India, and for punishing persons who aid and encourage such deserters; It is enacted as follows:—

1. If it shall appear that any officer or soldier, being a deserter from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees:

Provided always that no conviction for such offence as is hereinbefore described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or conceal a deserter on board his vessel, or has, by neglect of duty, or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

2. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency-towns of Calcutta, Madras, and Bombay, Magistrate, or person lawfully exercising the powers of a Magistrate in any port within the territories of the East India Company within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction.

3. No Conviction, order, or judgment of any Justice of the Peace, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but depositions taken supply that defect, the conviction, order, or judgment, shall be aided by what so appears in such depositions.

4. Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate, or other officer having authority in that behalf, from com-

Saving of proceedings under other Acts.

mitting for trial any person who shall be charged with an offence punishable under any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act:

Provided that no proceedings shall have been had against such person in respect of the same offence under this Act.

Proviso.

5. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment, or detachment, at any port or place within the territories of the East India Company, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above-named shall severally under this Act have power to administer;

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate having jurisdiction within such port or place,

there shall appear reason to suspect that any European officer or soldier belonging to the said Forces, who may have deserted or be absent without leave is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the East India Company, it shall be lawful for such commanding officer or Justice of the Peace, Magistrate or person lawfully exercising the powers of a Magistrate as aforesaid, to issue a warrant, authorizing the person or persons to whom such warrant may be addressed, to enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law.

6. The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said Forces, or to all constables, peace-officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant.*

7. Every person who shall be apprehended under any warrant under the 5th section of this Act shall be brought without delay before a Justice of the Peace, Magistrate,* or person lawfully exercising the powers of a

* Now a police officer may, without orders from a Magistrate, and without a warrant, arrest any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.—See the new Code of Criminal Procedure (Act V. of 1858), s. 54.

Magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps, or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest military station, in order that he may be dealt with according to law.

ACT NO. XII. OF 1856.*

The Civil Courts Amins Act, 1856.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH MAY, 1856.

An Act to amend the law respecting the employment of Amins by the Civil Courts in the Presidency of Fort William.

WHEREAS the law by which the Civil Courts are authorized to employ amins upon local investigations is defective, and requires amendment;† It is enacted as follows :—

Preamble.

1. [*Repeal of Regulations*].—*Repealed by Act XIV. of 1870.*

2. In each district, officers to be designated Civil Court amins shall be appointed for the purposes of this Act, and shall be remunerated by fixed monthly salaries.

Appointment of amins.

The number of amins to be employed in each district, and the salaries to be allowed to them, shall be determined by the Local Government, with the sanction of the Governor-General of India in Council.

3. The Civil Court amins shall be appointed by the Judge of Amins by whom appointed the district, and the Judge shall from time and to what Courts attached. to time attach them to the several Courts of the district, according as the state of business may require :

Provided that an amin attached to any particular Court may, with the sanction of the Judge, be employed occasionally by any other Court.

4. [*Declaration to be made by Civil Court Amins*].—*Repealed by Act X. of 1873.*

* Act XII. of 1856 has been declared to be in force throughout the N.-W. Provinces, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 7. Repealed in Bengal and locally in Assam by Ben. Act (II. of 1899).

† Here certain words, repealed by Act (XII. of 1891) Sch. I., have been omitted.

Duties of amins.

5. The Civil Court amins may be employed in any of the following duties:—

- i. in investigating or adjusting accounts in any suit or other judicial proceeding:
- ii. in making local investigations when the Court may deem investigation on the spot to be requisite and proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of mesne-profits or damages in any suit or other judicial proceeding:
- iii. in delivering over possession of lands, houses, and other immoveable property in execution of decrees or orders of Court:
- iv. in the sale of moveable property, and of houses, gardens, and other immoveable property of the kind described in section 3, Regulation VII., 1823:*
- v. in ascertaining the sufficiency of sureties and the means of persons suin g *in formā pauperis*.

6, 7. [*Procedure in referring accounts to Civil Court Amins; procedure in cases of local enquiry*].—*Repealed by Act X. of 1861.*

8. Whenever a Civil Court amin may be employed on any duty connected with a pending suit or the execution of a decree, except the sale of property, the Court shall estimate the time which the duty may be expected to occupy, and shall charge for the expense of the amin such fixed rate *per diem* as may be determined by the Sadr Court.

The amount shall be paid into Court by the party at whose instance or for whose benefit the amin is deputed, and shall be added to the costs of suit.

9. When a Civil Court amin shall be employed to sell property, a deduction at the rate of one āna in the rupee shall be made from the proceeds of the sale.

If no sale takes place by reason of the claim being satisfied, or for any other cause, a charge shall be made for the expenses of the amin according to the time he may be employed.

A deposit to meet this charge, calculated in the manner prescribed in the preceding section, shall be made before the amin is deputed, and shall be returned to the depositor if the sale takes place.

All sums paid for the employment of amins, and all sums deducted from the proceeds of sales, shall be credited to Government.

* Repealed by Act XVI. of 1874.

ACT NO. XV. OF 1856.*

The Hindu Widows' Remarriage Act, 1856

RECEIVED THE G.-G.'S ASSENT ON THE 25TH JULY, 1856.

An Act to remove all legal obstacles to the marriage of Hindu Widows.†

WHEREAS it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the government of the East India Company, Hindu widows, with certain exceptions, are held to be, by reason of their having been

Preamble.

* Act XV. of 1856 has been declared to be in force in the whole of British India except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has also been declared to be in force—

in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3;

in Angul and the Khondmals by Reg. (I. of 1894), s. 3; and

in the Arakan Hill Districts by Reg. (IX. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh ...	... See <i>Gazette of India</i> ...	1880, Pt. I., p. 672.
West Jalpaiguri ...	Ditto ...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum ...	Ditto ...	1881, Pt. I., p. 504.
Kumaon and Garhwal ...	Ditto ...	1876, Pt. I., p. 605.
The scheduled portion of the Mirzapur District ...	Ditto ...	1879, Pt. I., p. 383.
Jaunsar Bawar ...	Ditto ...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	Ditto ...	1886, Pt. I., p. 48.
The District of Lahaul ...	Ditto ...	1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces ...	Ditto ...	1879, Pt. I., p. 771.
Coorg ...	Ditto ...	1878, Pt. I., p. 747.
The District of Silhat ...	Ditto ...	1879, Pt. I., p. 631.
The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Kachar (excluding the North Cachar Hills) ...	Ditto ...	1878, Pt. I., p. 533.
The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvars in Goalpara District ...	Ditto ...	1897, Pt. I., p. 299.
The Porabhat Estate in the Singbhum District ...	Ditto ...	1897, Pt. I., p. 1059.
It has been extended, under the same Act, to the following Scheduled Districts:—		
The Tarai District ...	See <i>Gazette of India</i> ...	1876, Pt. I., p. 505.
The Andaman and Nicobar Islands	Ditto ...	1882, Pt. I., p. 148.

† As to the effect of unchastity in the case of a widow who has once inherited, see 13 B. L. R. 1.

once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences; and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; It is enacted as follows:—

Note.—14 W. R. O. J. 23.

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage. any custom and any interpretation of Hindu law to the contrary notwithstanding.

NOTE.

Note.—See 4 P. R. 1905; 61 P. R. 1905; 15 P. L. R. 1907; 46 P. R. 1891; 33 B. 107; 49 P. R. 1903; 19 C. 289, 16 C. P. L. R. 99; 8 A. 143. See also 6 M. 381.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall, upon her remarriage, cease and determine as if she had then died;* and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

NOTES.

A Hindu widow after remarriage forfeits her right in her deceased husband's estate although there is a custom of remarriage in her caste.—14 C. W. N. 346 = 5 I. d. Cas. 710; 22 B. 321; 22 C. 589; 1 M. 226; 15 Ind. Cas. 602; 21 C. W. N. 906; but see 7 A. L. J. 417; 31 A. 161; 29 P. L. R. 1901; 29 A. 122. According to Allahabad H. C. she also does not lose her right of maintenance by remarriage where such marriages are allowed by custom 31 A. 161. See also 29 Ind. Cas. 399; 32 Ind. Cas. 338; 24 Ind. Cas. 691. She is not only divested of all her estate thus inherited but also thereafter becomes incapable of inheriting any property which but for such remarriage, she would have inherited from a lineal

* *Parvati v. Bhiku*, 4 Bom. A. C. J. 25; *Akera Suth v. Boreani*, 2 B. L. R. 198.

successor.—6 N. L. R. 171. But in Bombay cases it has been held that a Hindu widow after her remarriage may inherit property from her son by her first husband.—29 B. 91=6 Bom. L. R. 779; 26 B. 388=4 Bom. L. R. 73; 28 M. 425; 6 N. L. R. 103; 11 A. 330; 8 Ind. Cas. 269; 20 A. 476; 10 W. R. 34; 4 Bom. L. R. 73. Now the question is does a Hindu widow who has ceased to be a Hindu before her marriage, by conversion, forfeit her rights to her husband's property? According to Calcutta and Madras decision she does.—19 C. 289 (F. B.); 41 Mad. 1078 (F. B.); 48 Ind. Cas. 50 (F. B.). But according to the Allahabad decision she does not:—35 A. 466; 11 A. L. J. 678.

Alienation.—An alienation made by Hindu widow without any legal necessity will not bind the reversioner, even during her lifetime, if she remarries whether, if a custom were proved according to which a remarried widow is entitled to retain property inherited from her husband, such a custom would not be given effect to in spite of the provisions of the Widow Remarriage Act.—15 Ind. Cas. 602; 8 Ind. Cas. 269.

3. On the remarriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted, by the will or testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court, having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment, the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother, unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

NOTE.

Note.—*Vide* 11 B. 119. Loses right of guardianship.—10 M. L. J. 309. But does not lose her right to give in her son by her former husband to adoption.—33 B. 102. But see 24 B. 89. Section 3 only deprives her of her preferential right to act as a guardian of her children by her first husband but it does not compel the Court to remove her from such guardianship.—15 C. W. N. 579; 38 C. 863. See also 4 A. 195.

4. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if, before the passing of this Act,

she would have been incapable of inheriting the same by reason of her being a childless widow.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her remarriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has remarried shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Saving of rights of widow marrying, except as provided in sections 2, 3, 4.

Note.—*Vide* 11 W. R. 82.

6. Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect, if spoken, performed, or made on the marriage of a Hindu widow, and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

7. If the widow remarrying is a minor whose marriage has not been consummated, she shall not remarry without the consent of her father, or, if she has no father, of her paternal grandfather, or, if she has no such grandfather, of her mother, or, failing all these, of her elder brother, or, failing also brothers, of her next male relative.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both.

Punishment for abetting marriage made contrary to this section.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law: Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Effect of such marriage.

Proviso.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient to constitute her remarriage lawful and valid.

Consent to remarriage of major widow.

NOTE.

Note.—The marriage a minor widow is not valid, unless there has been consent of the persons enumerated.—12 Ind. Cas. 623.

ACT NO. XVIII. OF 1856.

The Calcutta Land Revenue Act, 1856.*

RECEIVED THE G.-G.'S ASSENT ON THE 23RD AUGUST, 1856.

An Act relating to the administration of the public revenues in the Town of Calcutta.

WHEREAS it is expedient that the Collector of Calcutta† should have power to employ any Deputy Collector subordinate to him in the performance of any part of the duties of his office; It is enacted as follows:—

Preamble.

1. [Regulation modified].—*Repealed by Act XII. of 1891, Sch. I.*
2. [Collector to have charge of collection of stamp-duty in Calcutta].—*Repealed by Act XVIII. of 1869.*

3. It shall be lawful for the Collector of Calcutta to employ any Deputy Collector subordinate to him, in the performance of any part of the duties of his office under† Act XXIII. of 1850; and all Rules, Regulations, and Acts relating to the office of Deputy Collector, shall be of the same force within the town of Calcutta as in other parts of the territories subject to the Presidency of Fort William in Bengal.

Collector may entrust any part of his duties to his Deputy.

ACT NO. XX. OF 1856.‡

The Bengal Chaukidari Act, 1856.*

RECEIVED THE G.-G.'S ASSENT ON THE 14TH NOVEMBER, 1856.

An Act to make better provision for the appointment and maintenance of police-chaukidars in cities, towns, stations, suburbs, and bazars in the Presidency of Fort William in Bengal.

WHEREAS it is expedient to make better provision for the appointment and maintenance of police-chaukidars in cities, towns, stations, suburbs,

Preamble.

* This short title has been given by the Repealing and Amending Act I. of 1903.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ The Bengal Chaukidari Act is not in force in the United Provinces.—*Vide U. P. Act II. of 1914*

For power to extend Act XX. of 1856 to cantonments, see Act XIII. of 1889, s. 18. Act XXII. of 1871 is to be read with, and taken as part of, Act XX. of 1856.—*See s. 6 of Act XXII. of 1871.*

As to the Punjab, under s. 14 of the Cantonments Act (XXII. of 1864), since repealed, the Local Government has extended the provisions of Act XX. of 1856 to the cantonments of Multan, Rawalpindi, Sealkot, Kasauli, Dagshai, Sabathu, Jhelam, Jalandhar, Meen Meer, and Peshawar; under the Cantonments Act (III. of 1880), s. 12, to the cantonments of Jatogh, Ferozepur, and Amritsar; and under s. 2, to the town of Kalka. The Local Government may direct that Act XX. of 1856 shall cease to be in force in any local area over which a District Board has authority under the District Boards Act (XX. of 1883).—*See s. 69, ib.*

and bazars in the Presidency of Fort William in Bengal " and the territories under the administration of the Chief Commissioner of Oudh " * ; It is enacted as follows :—

1.† The monthly assessment levied under Regulation XXII., 1816,‡ and Act XV., of 1837,§ in any city or station at the time of the passing of this Act, shall continue to be levied until the same shall be revised and altered under the provisions of this Act.

2.§ The provisions of this Act shall have effect in all cities, stations, towns, suburbs, and bazars in the said Presidency " or territories " || to which the Local Government may at any time extend the same by notification in the official Gazette. Provided always that this Act shall not be extended to any agricultural village.

In all places in which this Act is now in force it shall be deemed to have been extended under the provisions of this section.

3. The Government may, by notification to be published in the official Gazette, unite, for the purposes of this Act, any city, town, suburb, station, or bazar, or any part or parts of a city, town, suburb, station, or bazar, with any other city, town, suburb, station, or bazar or part or parts of a city, town, suburb, station, or bazar; and in such case all the provisions of this Act, applicable to a city, town, suburb, station, or bazar, shall apply to such union.

4. For the purposes of this Act the Local Government may define and declare the limits of any city, town, suburb, station, bazar, or union; and all occupiers of houses within any such city, town, suburb, station, bazar, or union, as aforesaid or within such limits as shall be so defined as aforesaid, shall be liable to be assessed or rated according to the provisions of this Act for the purpose of maintaining the chaukidars appointed to be maintained in such city, town, station, suburb, bazar, or union.

5. If any house be let out in portions to different persons, or be let out to, or occupied by, lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers or travellers, shall, for the purposes of this Act, be deemed to be the occupier of such house.

* In the preamble, the words quoted have been inserted by the Oudh Laws Act (XVIII. of 1876).—Sch. II.

† A portion of s. 1, repealed by Act XIV. of 1870, has been omitted.

‡ Ben. Reg. XXII. of 1816 and Act XV. of 1837 were repealed by that part of s. 1 of Act XX. of 1856 which has itself been repealed by Act XIV. of 1870.

§ S. 2 has been substituted for the original by Act XXII. of 1871, s. 1.

|| In s. 2, as substituted by Act XXII. of 1871, the words quoted have been inserted by the Oudh Laws Act (XVIII. of 1876), Sch. II.

6. The Magistrate may cause a name to be given to any street and affixed in such place or places as he may think fit, and may also cause a number to be affixed to every house in any street or mahalla, for the purpose of identifying such house; and if any person shall wilfully remove, obliterate, or destroy, such name or number, he shall be liable, on conviction by a Magistrate, to a fine not exceeding twenty rupees.

7. The Magistrate shall determine the number of chaukidars to be maintained in any city, town, or other such place as aforesaid; but the number of chaukidars so to be maintained shall not exceed one to every twenty-five houses.

8. The chaukidars appointed under this Act may be of different grades, and the wages to be paid to the several grades shall be determined by the Magistrate.

9. The Magistrate shall determine the total amount required to be raised in any year in any city, town, or other such place as aforesaid, for the purpose of maintaining the chaukidars appointed to be maintained therein, and for the purposes specified in sections 33, 34, 35, and 36 of this Act, together with such sum as the Magistrate may consider necessary to provide against the contingency of losses from defaulters in the current year, and the amount of losses, if any, actually sustained from defaulters in the preceding year.

10. The tax to be levied in any city, town, or other place as aforesaid, for the purposes of this Act, may be either an assessment according to the circumstances and the property to be protected, of the persons liable to the same, or a rate on houses and grounds according to the annual value thereof.

The Local Government, on the report of the Magistrate and Commissioner,* shall determine in each case whether the tax to be levied shall be such assessment or such rate.

11.† If the tax be an assessment according to the circumstances and the property to be protected of the persons liable to the same, the amount assessed in respect of any one house shall not be more than the pay of a chaukidar of the lowest grade. If the tax be a rate on houses and grounds, it shall not exceed five per centum of the annual value thereof.

* Here the words " of Circuit," repealed by Act XII. of 1891, Sch. I., have been omitted.

† S. 11 has been substituted for the original by Act XXII. of 1871, s. 2.

12. For the purpose of making a rate under this Act, the Rate how to be ascertain- annual value of the houses and grounds li-
ed. able to the rate shall be computed and ascer-
tained upon an estimate of the gross annual rent at which the same
might reasonably be expected to let from year to year.

Grounds used for purposes of trade shall be liable to the rate,
but grounds used for the purpose of cultivation or for depasturing
cattle shall not be liable.

13. The Magistrate may, at his discretion, exempt from the
Magistrate may exempt assessment or rate, or may relieve from the
occupiers unable to pay. payment of his assessment or rate, any
occupier who may be unable from poverty to pay the same.

14. For the purposes hereinafter mentioned, the Magistrate
Constitution of panch- shall constitute and appoint a panchayat
ayats. for each such city, town, or other place
as aforesaid, or, when he may see fit to divide any such city, town,
or place into convenient divisions, for each division thereof, and
shall issue a sanad of appointment, specifying the names, residence,
business, or other description of the persons appointed, and the
period for which the appointment is made.

Every panchayat shall consist of three or five respectable
persons residing or carrying on business in or near to any such
city, town, or other place, or in or near to any such division thereof:

Provided that, instead of any one such person, the Magistrate
Magistrate may appoint may appoint any person whom he may think
non-resident person to be a fit to be a member of the panchayat, not-
member. withstanding such person may not reside or
carry on business in or near to such city, town, or other place, or
in or near to any such division thereof.

15. The panchayat so appointed, or the majority of them,
Duties of panchayat shall, once in every year, if required so to
do by the Magistrate, prepare and make, in
accordance with the rules laid down in the requisition, an assess-
ment or rate upon the several persons liable to be assessed or
rated in respect of their occupation of property within the district
(whether city, town, or other place as aforesaid, or any division
thereof) for which the panchayat shall be appointed, and shall enter
the same in a list which shall specify the names of the several
occupiers of property within the district liable to be assessed or
rated under the provisions of this Act, the trade, business, or
other description of such occupier, the property occupied, and the
amount payable monthly by such occupier.

If the tax be a rate on the annual value of the property occupied,
such annual value and the total amount of the annual rate shall also
be specified.

The requisition of the Magistrate to the panchayat to make out such list shall be in the form marked A or B, as the case may be, set forth in the appendix to this Act annexed, or to the like effect.

16 The panchayat shall, if required by the Magistrate so to do, instead of making a new assessment or rate, revise and amend the assessment or rate then in force.

17. When an assessment or rate shall have been made or revised, as the case may be, the panchayat shall forward to the Magistrate the list containing the same ; and the Magistrate shall revise, and, if necessary, amend and settle it.

18. When the assessment or rate shall have been settled, the Magistrate shall sign the list, and shall cause one copy thereof, together with a notification prepared according to the form marked C in the appendix to this Act, or to the like effect, and written in the language of the province in which the city, town, or place is situate, to be stuck up in some conspicuous place in the district for which the assessment or rate has been made ; and another copy, together with a like notification at the nearest police-thana ; and shall also cause a third copy to be deposited in his own office.

19. Unless revised or corrected as hereinafter provided, every assessment or rate under this Act shall stand good for one whole year, and until a new one is made, and in case the occupier of any property included in any assessment or rate shall be changed before a new one is made, the new occupier shall be liable in respect of such property for any portion of the assessment or rate which shall have become payable during his occupation instead of the former occupier thereof ; and, after notification to such person, the Magistrate may cause his name to be substituted in the said list for the name of the former occupier.

Every assessment or rate which shall be revised according to the provisions of section 16 shall be deemed a new assessment or rate :

Provided always that, if no new assessment or rate is made within the first three months of any year, the list of the previous year shall be republished according to the provisions of section 18, and shall thereupon be deemed to be the assessment of rate for the current year, and shall be open to appeal under the next succeeding section.

20. Any person assessed or rated, who shall be dissatisfied with his assessment or rate, or who shall dispute his occupation of any property, or his liability to be assessed or rated, may appeal on unstamped paper to the Magistrate, and the Magistrate, after making such inquiries as he deems necessary, by examination of the appellant on oath or solemn affirmation, or otherwise, may confirm the assessment or rate or amend the same.

Award of costs.

In case the Magistrate confirm the assessment or rate, he may award costs against the appellant.

The decision of the Magistrate in such cases shall be final, and no objection shall be taken to any assessment or rate, nor shall the liability of any person to be assessed or rated be questioned in any other manner or by any other Court :

Provided that no appeal shall be received after the expiration of one month from the time of the notification of the assessment or rate prescribed by section 18, or of the notification of the substitution of the name of an occupier under section 19, unless the Magistrate, upon reasonable cause shown, shall extend the time for receiving such appeal.

21. The Commissioner,* with the consent of the Local Government, may at any time direct the Magistrate to revise the assessment or rate of any city, town, or other place as aforesaid, specifying the reasons which, in his opinion, render such revision necessary, and the Magistrate shall, according to such direction, revise and, if necessary, amend the same.

22. The Magistrate may require the panchayat to revise the assessment or rate at any period during the year ; but on every such occasion he shall address a written order to the panchayat, specifying the reasons which render such revision necessary, and requiring an amended return within a stated period.

23. Whenever any assessment or rate is revised during the year as provided in the two last preceding sections, a revised list, together with a notification as prescribed in section 18, shall be prepared and published in the manner therein directed.

And all objections to such revised assessment or rate shall be made and dealt with in the manner prescribed in section 20.

* Here the words "of Circuit," repealed by Act XII. of 1891, Sch. I., have been omitted.

24. If any person appointed a member of a panchayat refuse to undertake the office, or omit to perform the duties thereof, and do not, within fifteen days from the date of his appointment, shew satisfactory grounds for his refusal or omission, or provide such a substitute as the Magistrate approves, the Magistrate may fine such person in a sum not exceeding fifty rupees.

25. If the persons appointed a panchayat, or a majority of them, refuse or omit, for a period of fifteen days after the receipt of an order from the Magistrate, to perform the duties required of them, the Magistrate may himself make or revise the assessment or rate, and may enforce the same as if it had been made or revised in the first instance by the panchayat :

Provided that the functions of the panchayat shall not thereby absolutely cease and determine, but may be resumed at any time, only not so as to invalidate any act done by the Magistrate under this section.

26. No person shall be bound to act on a panchayat unless he shall reside or carry on business within the limits of the district for which the panchayat is to be appointed.

27. Every panchayat shall be appointed for the period of one year, and no person shall be compelled to serve on a panchayat for more than one year at a time, or within less than three years after the expiry of previous service; but nothing in this section shall prevent any person from being appointed to serve on a panchayat at any time whatsoever with his own consent.

28. If a majority of the persons assessed or rated in any district for which a panchayat shall be appointed, not being in arrear, make application in writing to the Magistrate for the removal for any member of the panchayat appointed for such district, the Magistrate, if he think it expedient, may remove such member from the panchayat.

29. If any vacancy shall occur among the members of a panchayat, or if any member appointed shall refuse or decline or be unable to act, the Magistrate may nominate and appoint another person to supply the vacancy or to act in the stead of such member, subject to the rules already laid down as to the original appointment of members; but such appointment may be made by a written communication to the person appointed, and it shall not be necessary to issue a new sanad under section 14 of this Act.

30. The panchayat shall give notice to the Magistrate of any neglect or misconduct on the part of any Panchayat to report mis- conduct of chaukidars, or death or absence. chaukidar within the district for which they are appointed, which shall come to their knowledge ; and shall also give notice of any vacancy which shall occur in consequence of the death or absence of any chaukidar, or from any other cause.

31. In cities and large towns containing three or more divisions or districts, the Magistrate may Appointment and duty of sadr panchayat. appoint a sadr panchayat, consisting of not less than five members, who may be selected either from the members of the local panchayats or from any other residents of the city or town.

It shall be the duty of the said panchayat to assist the Magistrate, when required so to do, in carrying out generally the objects of this Act, and particularly in revising the assessment or rate made by the district-panchayats, and enquiring into and reporting on appeals preferred against the same.

32. The chaukidars to be employed under this Act shall be appointed by the Magistrate, and the Magistrate, shall cause to be kept a register, in Appointment and registry of chaukidars. which shall be entered the name, age, place of residence, and previous occupation of every person so appointed, with the date of his appointment.

33.* Subject to the approval of the Commissioner† the Magistrate may appoint such number of jamadars and inspectors. and inspectors as may be necessary for the supervision and control of the chaukidars :

Provided that the number of these officers shall not be greater than one jamadar to fifteen chaukidars, and one inspector to sixty chaukidars.

Their number.

34.* Subject to the approval of the Commissioner† the Magistrate may appoint one or more tax-collectors or daroghas, and such other servants as may be necessary, for preparing, or assisting the panchayat in preparing, the assessment or rate, for copying the same, for collecting the tax, keeping the accounts and records, and otherwise carrying out the purposes of this Act.

The Magistrate shall take from every tax-collector or darogha such security for the due disposal of the sums Security. collected by him as may be thought necessary.

* As to raising money for the purposes specified in ss. 33 to 36, see s. 9, *supra*, p. 170.

† Here the words, "of Circuit," repealed by Act XII. of 1891, [Sch. I., have been omitted.

35.* The Magistrate may further incur any reasonable expense in the purchase of stationery in providing badges, dresses, and weapons for the chaukidars, and for any other contingencies that may seem to him necessary.

36.* After paying the wages of chaukidars, and defraying the charges specified in the three last preceding sections of this Act, the Magistrate may, with the sanction of the Commissioner,† appropriate any sum which may be available to the purpose of cleansing the city, town, or place, or of lighting or otherwise improving the same.

37. The tax-daroghas shall prepare from the lists hereinbefore mentioned a register, which shall be attested by the Magistrate or his Deputy or Assistant, and shall contain the names of all persons assessed or rated so far as they can be ascertained, the property in respect of which the assessment or rate in each case is imposed, and the amount payable monthly by each person.

38.‡ On such dates as may be fixed by the panchayats for payment of instalments of the tax, the tax-darogha shall proceed in person or through some one of his office-establishment to collect the amount due for the current month from each person subject to the tax; and for all sums so collected, the darogha shall grant a receipt:

Provided that, with the sanction of the Commissioner§ previously obtained, the collection may be made quarterly instead of monthly; and in such case the amount due for each quarter shall be collected in the last month of that quarter.

39. The tax-darogha shall remit to the Magistrate, in such manner as the Magistrate shall direct, all sums of money collected either by himself or by any one of his establishment, and the Magistrate or some officer of his establishment authorized on that behalf shall give the darogha a receipt for every sum of money so remitted.

The Magistrate shall also cause all such sums of money to be credited to a separate fund, to be called the chaukidari fund of the city, town, or place in or on account of which they are collected.

* As to raising money for the purposes specified in ss. 33 to 36, see s. 9, *supra*, p. 170.

† Here the words, "of Circuit," repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ S. 38 has been substituted for the original by Act XXII. of 1871, s. 3.

§ In s. 38 (as amended by Act XXII. of 1871, s. 3), the word "Commissioner" has been substituted for the words "Commissioners of Circuit" by Act XII. of 1891, Sch. II.

40.* The tax-darogha shall prepare all summonses and pro-
Preparation of summons, &c. cesses to be issued against defaulters, and shall make the usual returns thereto, and shall keep a regular account of all distresses levied and sales made by him for the realization of arrears.

41. "On the tenth day after the date fixed for the payment of
Report of defaulters to Magistrate instalments of the tax,"† or as soon after as possible, the tax-darogha shall deliver or transmit to the Magistrate, in one list, a statement of all defaulters, the property in respect to which they are assessed or rated, the amount of the monthly assessment or rate, and the amount due from each.

42. On receipt of the aforesaid list, the Magistrate shall issue
Summoning defaulters. a summons, against each of the defaulters therein mentioned, requiring him either to pay the demand, or to attend at the kachahri of the Magistrate within reasonable time, to be specified in the summons, to show cause for his refusal.

43. If any defaulter fail to appear in answer to the summons,
Assessment to be levied from defaulters by distress and sale. or, having appeared, fail to satisfy the Magistrate that no arrear is due from him, the Magistrate may issue a warrant to the tax-darogha, authorizing him to levy the whole or any part of the demand by distress and sale of any goods and chattels belonging to the defaulter, or being at any time upon the premises in respect of which the arrear is due; and the Magistrate's order as contained in the warrant shall be final.

44. The tax-darogha shall make an inventory of all goods and
Sale how conducted. chattels seized under the Magistrate's warrant, and shall give previous notice of the sale, and the time and place thereof, by beat of drum, in the district in which the property is situated.

If the arrear be not paid with costs, or the warrant be not in
Proceeds how applied. the meantime discharged or suspended by the Magistrate, the goods and chattels seized shall be sold at the time and place specified, in the most public manner possible; and the proceeds shall be applied in discharge of the arrears and costs, and the surplus, if any, shall be returned on demand to the person in possession of the goods and chattels at the time of the seizure.

The tax-darogha shall make a return of all such sales to the
Returns of sale. Costs. Magistrate in the form specified in Appendix D, and the costs upon every such proceeding shall be such as are mentioned and set forth in Appendix E annexed to this Act.

* In Oudh s. 40 is repealed.—See Act XVIII. of 1876, Sch. II.

† The words quoted in s. 41 have been substituted for the original by Act XXII. of 1871, s. 4.

45. Any tax-darogha or other servant appointed under this Act, and any chaukidar or officer of police, who shall purchase any property at any such sale as aforesaid, shall be liable, upon conviction before a Magistrate, to a penalty not exceeding fifty rupees; and the property shall be confiscated.

46. If no sufficient goods or chattels belonging to a defaulter, Sale of property beyond limits of town, &c. of which he is assessed or rated, can be found within the district in which the premises are situate, the Magistrate may issue his warrant to the nazir of his Court for the distress and sale of any personal property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any personal property belonging to the defaulter within the jurisdiction of any other Magistrate whatsoever; and such other Magistrate shall back the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant.

47. All goods and chattels, except tools or implements of trade, which may be found upon any premises in respect of which an arrear is due, shall be liable to be distrained for the recovery of such arrear.

If any goods and chattels belong to any person other than the defaulter, the defaulter shall indemnify the owner of such goods and chattels from any damage he may sustain by reason of such distress or by reason of any payment he may make to avoid such distress or any sale under the same:

Provided that no distress shall be made for any arrears due under this Act, after the expiration of six calendar months from the time when such arrears became due.

48. Every person who shall wilfully obstruct or molest any tax-darogha or any of his establishment in the performance of their duties under this Act, or shall fraudulently conceal, remove, or dispose of any of his property for the purpose of avoiding a distress under the provisions of this Act, or shall knowingly assist any other person in so doing, shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty rupees.

49. The Magistrate shall receive and try all complaints preferred on oath or solemn affirmation against any tax-darogha or other person appointed under this Act, for extortion, malversation, or other misconduct in the discharge of his duty.

On proof of any such offence, the tax-darogha or other person as aforesaid shall be liable to dismissal from office, and to imprisonment, with or without labour, for a period not exceeding six months, and may also be compelled to refund any money corruptly or unduly exacted or received, and to deliver up any effects which may have been illegally distrained or sold, or the value thereof, or, in default and until such delivery or refund be made, shall be liable to further imprisonment, with hard labour, for not more than six months.

But nothing in this section shall be taken to prevent the Magistrate from committing any tax-darogha or other person as aforesaid for trial before the Sessions Court, or to limit the power of the Sessions Court in regard to the punishment of such offences under the general law.

50. The chaukidars and the jamadars and inspectors appointed under this Act shall exercise all the powers, and perform all the duties, and be subject to all the liabilities, of police-officers as prescribed in the general Regulations of the Bengal Code or Acts of the Government of India for the time being in force, so far as such powers, duties, and liabilities are not inconsistent with, or otherwise expressly provided for by, this Act.

The chaukidars and the jamadars and inspectors are in all respects subordinate to the police-darogha of the thana within the limits of which they may be employed.

51. Every chaukidar appointed under this Act shall wear a badge with a number; and the name of the city, town, place, or division for which he is appointed, engraved thereon.

52. Every chaukidar and every jamadar and inspector appointed under this Act shall have power, without warrant, to apprehend and convey immediately to the nearest police-station any person or persons taken in the act of committing any heinous offence, or whom he shall have just cause to suspect to be about to commit or to have committed a heinous offence, or against whom a hue and cry shall be raised:

Second.—He shall have power to prevent obstructions and nuisances on the roads and streets:

Third.—He shall give immediate intelligence to the police-darogha of the resort to his division of any receivers of stolen goods, or of any robbers or other persons of notorious or suspected character, or of any circumstances likely to occasion a breach of the peace:

Fourth.—He may stop, examine, and, if necessary, detain any person who shall be reasonably suspected to examine and detain suspected persons. at any time of having or conveying anything stolen, or who shall be found between sunset and sunrise lying or loitering in any highway, yard, or other place, and unable to give a satisfactory account of himself, and may convey such person to the nearest police-station.

53. If a chaukidar or other police-officer be unable to effect an arrest, he may require all persons present to assist him; and any person who refuses or neglects to comply with such requisition shall be liable, on conviction by a Magistrate, to a fine not exceeding fifty rupees, or to imprisonment not exceeding two months.

54. On the fifteenth day of each month, or on such other day as the Magistrate may appoint, the chaukidars and the jamadars and inspectors (if any) shall be mustered at the thana to which they are attached, and the police-darogha or muharrir of the thana shall there pay them the wages due to them up to the close of the preceding month, and shall at the same time take the receipt of each chaukidar in an official register of receipts prepared for the purpose; and the darogha, after signing the register in attestation of its correctness, shall transmit the same to the Magistrate.

55. Any chaukidar and any jamadar or inspector appointed under this Act, who is convicted of neglect of duty or misconduct, shall be liable to fine to an extent not exceeding half a month's wages, or to imprisonment for any period not exceeding six months.

56. The Magistrate may suspend or dismiss any officer appointed under this Act, whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

57. All fines levied under this Act shall be credited to the chaukidari fund,* and held available for the purposes of this Act.

58. [*Jurisdiction of Magistrate*].—*Repealed by Act X. of 1872.*

59. All the proceedings of a Magistrate under this Act, except as otherwise specially provided, shall be subject to the control of the Commissioner,† and all the proceedings of the Commissioner,† shall be subject to the control of the Local Government.

* As to this fund, see s. 39, *supra*, p. 187.

† Here the words "of Circuit," repealed by Act, XII. of 1891, Sch. II., have been omitted.

60. [Act not to apply to Calcutta].—Repealed by Act XII. of 1891, Sch. I.

Interpretation-Clause.

61. Wherever in this Act or in any appendix thereto, there is nothing in the context requiring a different interpretation—

the word "Magistrate" shall include a joint Magistrate and any person lawfully exercising the powers of a Magistrate :

the word "house" shall include any shop or warehouse :

the word "bazar" shall mean any place of trade where there is a collection of shops or warehouses :

the word "district" shall mean a city, town, bazar, or union, or any division thereof :

the expression "police-darogha" shall include any tahsilder or naib-tahsildar entrusted with police-jurisdiction.

APPENDIX A.*

To

[Here insert the names, places of abode, business, or other description of the panchayat.]

I do hereby require you, the panchayat appointed under Act XX. of 1856, with all reasonable expedition, not exceeding (here insert a period to be fixed by the Magistrate) from the date hereof, to make out and forward to me, the undersigned Magistrate of the zilla of _____, a fair and equitable assessment upon the several occupiers of houses, shops, and buildings in the (here describe the city, town place, or division), for the purpose of raising the sum of rupees _____ required for the maintenance of chaukidars for the year commencing on _____ and other expenses authorized by Act XX. of 1856. You shall regulate and determine the amount of assessment to be levied from every such occupier according to the circumstances and the property to be protected of each person. But the amount assessed in respect of any one house shall not exceed rupees (here insert the pay of a chaukidar of the lowest grade).†

If the occupier of any house in the said district shall be unable, on the ground of poverty, to pay the assessment to which he is liable under this Act, you shall exempt him from the same ; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers or travellers, shall be deemed the occupier of such house, and shall be assessed accordingly.

The assessment which you are hereby required to make shall specify the name of every occupier of property liable to be assessed, the name, trade, or business, or

* See s. 15, *supra*, p. 172.

† Here certain words, repealed by Act XXII. of 1871, s. 5, have been omitted,

other description of the person assessed, the annual assessment, and the quota payable monthly ; and may be in the following form, or to the like effect :—

Property occupied.	Name of occupier.	Profession or business or other description.	Amount of monthly payment.

APPENDIX B.*

To

[*Here insert the names, places of abode, business, or other description of the panchayat.*]

I do hereby require you, the panchayat appointed under Act XX. of 1856, with all reasonable expedition, not exceeding (*here insert a period to be fixed by the Magistrate*) from the date hereof, to make out and forward to me, the undersigned Magistrate of the zilla of _____, a fair and equal rate upon the several occupiers of houses, shops, and buildings, and of grounds occupied for the purpose of trade or business, in the (*here describe the city, town, place, or division*), for the purpose of raising the sum of rupees _____ required for the maintenance of chaukidars for the year commencing on _____ and other expenses authorized by Act XX. of 1856. You shall regulate and determine the amount of the rate to be levied from every such occupier according to the annual value of the property occupied.

The rent at which any such property may reasonably be expected to let for one year shall be deemed the annual value of such property. The rate shall be an equal percentage, not exceeding five per cent., of such annual value.

Any person occupying ground for the purpose of trade is to be rated in respect thereof, but a person occupying ground for the purpose of cultivation or for depasturing cattle is not to be rated in respect thereof.

If the occupier of any house or ground in the said district shall be unable, on the ground of poverty, to pay the rate to which he is liable under this Act, you shall exempt him from the same ; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons, or lodgers, or travellers, shall be deemed the occupier of such house, and shall be rated accordingly.

The rate which you are hereby required to make shall specify the name of every occupier of property liable to be rated, the name, trade, or business, or other description of the person rated, the annual rateable value of the property, the

* See s. 15, *supra*, p. 172.

annual rate, and the quota payable monthly ; and may be in the following form, or to the like effect :—

Property occupied.	Name of occupier.	Profession or business or other description.	Annual value of property.	Annual rate.	Amount of monthly payment.

APPENDIX C.*

An assessment (*or rate as the case may be*) made for (*here describe the city, town, village, or other place or division for which the rate is made*) upon the several occupiers of houses and other property in the said district, pursuant to Act XX. of 1856, for the purpose of maintaining chaukidars for such district.

Property occupied.	Names of occupiers.	Profession or business.	Amount of monthly (<i>or quarterly</i>) assessment (<i>or rate</i>).

Whereas the above assessment (*or rate as the case may be*) has been duly made pursuant to Act XX. of 1856, and has been revised and settled by me, the undersigned Magistrate of _____, the several persons whose names are included in the said assessment (*or rate*) are hereby required to pay the monthly (*or quarterly*) contributions set opposite to their names with regularity to the tax-darogha or other person appointed by the Magistrate to receive the same; *if the tax is to be collected quarterly, the months in which the payment is to be made must be specified*, or in default thereof, any arrear that may be due will be realized by distraint and sale of the personal effects of the defaulter, or of any goods and chattels which may be found on the premises in respect of which such defaulter is assessed (*or rated*), and such other proceedings adopted for the recovery of the same as are allowed by law.

Dated this _____ day of _____

Magistrate of _____

* See s. 18, *supra*, p. 172.

† Here certain words, repealed by Act XXII. of 1871, s. 5, have been omitted.

APPENDIX D.

1	2	3	4	5	6	7	8	9	10	11
District.	Names of defaulters.	Amount of defaultation.	Amount, cost, or penalty.	Inventory of property seized under distress.	Date of distress.	Date of sale.	Property sold.	Amount realized on each article.	Purchaser's name.	Balance.

APPENDIX E.

Table of Fees payable in Distraints under this Act.

Sum distrained for							Fee.	
							Rs.	As.
Under 1 rupee	...	...	...	...	...	...	0	4
1 and under 3 rupees	...	...	...	...	...	...	0	8
3 "	5 "	...	...	...	...	...	1	0
5 "	10 "	...	...	...	...	...	1	8
10 "	15 "	...	...	...	...	...	2	0
15 "	20 "	...	...	...	...	...	2	8
20 "	25 "	...	...	...	...	...	3	0
25 "	30 "	...	...	...	...	...	3	8
30 "	35 "	...	...	...	...	...	4	0
35 "	40 "	...	...	...	...	...	4	8
40 "	45 "	...	...	...	...	...	5	0
45 "	50 "	...	...	...	...	...	5	8
50 "	60 "	...	...	...	...	...	6	0
60 "	80 "	...	...	...	...	...	7	8
80 "	100 "	...	...	...	...	...	9	0
Above	100 "	...	...	...	...	...	10	0

The above charge includes all expenses, except when peons are kept in charge of property distrained, in which case three annas must be paid daily for each man.

ACT NO. II. OF 1857.

The Calcutta University Act, 1857.*

RECEIVED THE G.-G.'S ASSENT ON THE 24TH JANUARY, 1857.

An Act to establish and incorporate an University at Calcutta.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort William in Bengal and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Calcutta for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by academical degrees as evidence of their respective attainments, and marks of honour proportioned thereunto: and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated; It is enacted as follows:†—

Incorporation

1. The following persons, namely,

- The Right Honourable Charles John Viscount Canning, Governor-General of India ;
- The Honourable John Russell Colvin, Lieutenant-Governor of the North-Western Provinces ;
- The Honourable Frederick James Haliday, Lieutenant-Governor of Bengal ;
- The Honourable Sir James William Colville, Knight, Chief Justice of the Supreme Court of Judicature in Bengal ;
- The Right Reverend Daniel Wilson, Doctor of Divinity, Bishop of Calcutta ;
- The Honourable George Anson, General, Commander-in-Chief of the Forces in India ;
- The Honourable Joseph Alexander Dorin, Member of the Supreme Council of India ;
- The Honourable John Low, Major-General, Companion of the Most Honourable Order of the Bath, Member of the Supreme Council of India ;
- The Honourable John Peter Grant, Member of the Supreme Council of India ;
- The Honourable Barnes Peacock, Member of the Supreme Council of India :

* This title has been given by the Indian Short Titles Act (XIV. of 1897).

† The words, "that is to say," in the preamble, repealed by Act XII. of 1876, s. 1, have here been omitted,

- Charles Allen, Esquire, Member of the Legislative Council of India ;
- Henry Ricketts, Esquire, Provisional Member of the Supreme Council of India ;
- Charles Binny Trevor, Esquire, Judge of the Sadr Court in Bengal ;
- Prince Gholam Muhammad ;
- William Ritchie, Esquire, Advocate-General in Bengal ;
- Cecil Beadon, Esquire, Secretary to the Government of India ;
- Colonel Henry Goodwyn, of the Bengal Engineers, Chief Engineer in Bengal ;
- William Gordon Young, Esquire, Director of Public Instruction in Bengal ;
- Lieutenant-Colonel William Erskine Baker, of the Bengal Engineers, Secretary to the Government of India ;
- Lieutenant-Colonel Andrew Scott Waugh, of the Bengal Engineers, Surveyor-General of India ;
- Kenneth Mackinnon, Esquire, Doctor in Medicine ;
- Hodgson Pratt, Esquire, Inspector of Schools in Bengal ;
- Henry Walker, Esquire, Professor of Anatomy and Physiology in the Medical College of Bengal ;
- Thomas Thompson, Esquire, Doctor in Medicine, Superintendent of the Botanical Garden at Calcutta ;
- Frederick John Mouat, Esquire, Doctor in Medicine, and Fellow of the Royal College of Surgeons ;
- Lieutenant William Nassau Lees, of the Bengal Infantry ;
- The Reverend William Kay, Doctor of Divinity, Principal of Bishop's College ;
- The Reverend Alexander Duff, Doctor of Divinity ;
- Thomas Oldham, Esquire, Superintendent of the Geological Survey of India ;
- Henry Woodrow, Esquire, Inspector of Schools in Bengal ;
- Leonidas Clint, Esquire, Principal of the Presidency College ;
- Prosonno Kumar Tagore, Clerk, Assistant of the Legislative Council of India ;
- Ramapershad Roy, Government Pleader in the Sadr Court of Bengal ;
- The Reverend James Ogilvie, Master of Arts ;
- The Reverend Joseph Mullens, Bachelor of Arts ;
- Maulvi Muhammad Wujeeh, Principal of the Calcutta Mudrasah ;
- Ishwar Chandra Bidya Sagar, Principal of the Sanskrit College of Calcutta ;

Ramgopal Ghose, Formerly Member of the Council of Education;

Alexander Grant, Esquire, Apothecary to the East India Company;

Henry Stewart Reid, Esquire, Director of Public Instruction in the North-Western Provinces,

being the first Chancellor, Vice-Chancellor, and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor, or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor, or Fellows are hereby constituted and declared to be one Body, Politic and Corporate, by the name of the University of Calcutta; and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories "under the Government of India."*

2. The† Body Corporate shall be able and capable in law to take, purchase, and hold any property, moveable or immoveable, which may become vested in it for the purposes of the‡ University by virtue of any purchase, grant, testamentary disposition, or otherwise; and shall be able and capable in law to grant, demise, alien, or otherwise dispose of, all or any of the property, moveable or immoveable, belonging to the‡ University; and also to do all other matters incidental or appertaining to a Body Corporate.

Constitution of Body Corporate.

Senate,
Office vacated by leaving India.

3.† If any person, being Chancellor, Vice-Chancellor, or Fellow of the said University, shall leave India without the intention or returning thereto, his office shall thereupon become vacant.

Note.—For constitution, *vide* s. 4 of Act VIII. of 1904.

Chancellor.

4. The Governor-General of India for the time being shall be the Chancellor of the said University.‡

5. The office of Vice-Chancellor shall be held for two years only. Whenever a vacancy shall occur

Vice-Chancellor.

in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time, or otherwise, the Governor-General of India in Council

* Here the words, "under the Government of India," have been substituted for the words "in the possession and under the Government of the East India Company," by Act XII. of 1891, Sch. I.

† Certain words in ss. 2, 3 and 5, repealed by Act VIII. of 1904 have been omitted.

‡ Certain words in ss. 4 and 5, repealed by Act XII. of 1876, s. 1, have been omitted.

shall, by notification in the *Calcutta Gazette*, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy: Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor-General of India in Council shall have power to reappoint any future Vice-Chancellor to such office.*

6. [*Fellows*].—*Repealed by Act VIII. of 1904.*

7. The Governor-General of India in Council may cancel the appointment of any person already appointed, or hereafter to be appointed, a Fellow of the University; and as soon as such order is notified in the *Gazette*, the person so appointed shall cease to be a Fellow.

8. The Chancellor, Vice-Chancellor, and Fellows for the time being, shall have the entire management of, and superintendence over, the affairs, concerns, and property of the said University; and, in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor, and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University.†

9. [*Meetings of the Senate*].—*Repealed by Act VIII. of 1904.*

10. [*Appointment and removal of examiners and officers*].—*Repealed by Act VIII. of 1904.*

11. [*Power to confer degrees*].—*Repealed by Act VIII. of 1904.*

12. [*Qualification for admission of candidates for degrees*].—*Repealed by Act VIII. of 1904.*

13. [*Examination for degrees*].—*Repealed by Act VIII. of 1904.*

14. [*Grant of degrees*].—*Repealed by Act VIII. of 1904.*

15. The said Chancellor, Vice-Chancellor, and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor-General in Council, shall, from time to time, see fit to impose. Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor-General of India in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor-General of India in Council may direct.

Fees.

Annual accounts.

* Certain words in ss. 4 & 5, repealed by Act XII. of 1876, s. 1, have been omitted.

† One paragraph after this repealed by Act VIII. of 1904 has been omitted.

ACT NO. IV. OF 1857.

Tobacco (Bombay town).

RECEIVED THE G.-G.'S ASSENT ON THE 9TH FEBRUARY, 1857.

An Act to amend the law relating to the duties payable on tobacco, and the retail-sale and warehousing thereof in the town of Bombay.

WHEREAS it is expedient to amend the law relating to the duties payable on tobacco and the retail-sale and warehousing of that article in the town of Bombay ; It is hereby enacted as follows :—

1. [*Repeal of enactments*].—*Repealed by Act XI V. of 1870.*

2. All tobacco (except such small quantities as are hereinafter mentioned) imported from any place into the town of Bombay, and intended for consumption therein, shall be liable to a duty of seven rupees and eight annas per maund of forty seers of eighty tolas to the seer, which duty is hereinafter called the municipal duty.*

3. The said municipal duty may be paid, at the option of the importer, either on the importation of the tobacco, or after it has been warehoused as hereinafter provided.

4. If the said municipal duty is not paid on importation, the tobacco shall be warehoused in a public or licensed warehouse ; and the importer shall pay such duty on the said tobacco on its removal from the warehouse for consumption in the said town.

When tobacco so warehoused is re-exported to any place beyond the limits of the said town, the whole of the said municipal duty shall be remitted.

5. The port of Bombay shall be held to be a warehousing port, so far as regards the warehousing tobacco.*

6. The Commissioner of Customs, Salt, and Opium, and officers of customs, shall have all the same powers and authorities for collecting and enforcing payment of the said municipal duty, in addition to the powers and authorities specified in this Act, as they now have or shall have in respect of duties of customs.

* Here certain words, repealed by Act XII. of 1891, Sch I., have been omitted.

7. It shall not be lawful, without the permission of the Commissioner of Customs, Salt and Opium, or other officer empowered by Government to grant such permission, to bring any tobacco or any preparation thereof into Bombay otherwise than by sea, nor to land the same at any other landing-places than such as may from time to time be prescribed by the Government of Bombay.

8. The foregoing provisions of this Act shall not be applicable to such small quantities of tobacco (not exceeding in weight four seers of eighty tolas to the seer) as are intended for the private consumption of the importer.

9. It shall not be lawful to remove any tobacco from one place to another within the said town, nor to carry or convey the same on any thoroughfare in the said town, nor to carry the same in any vessel or boat of less than forty khandis burthen in any of the creeks or waters adjacent to the said town, without a permit from the Commissioner of Customs, Salt, and Opium, which permit shall be in the form of Schedule A to this Act annexed, or to the like effect ;

any such permit shall be in force only between sunrise and sunset of the day for which it is granted :

Provided always that it shall be lawful to convey without a permit any tobacco so far as may be necessary for the lawful importation thereof according to the provisions of this Act, and also small quantities of tobacco, not exceeding in weight four seers of eighty tolas to the seer, for personal or domestic use.

10. No permit shall be granted for the removal from warehouse of any quantity of tobacco less than an entire bale or package :

Provided that, when tobacco is to be removed for consumption in the said town, the Commissioner of Customs, Salt, and Opium, may give permission to open any bale or package previous to removal, and to set aside such portion thereof as may be refuse or waste ; and the said refuse or waste may be re-exported, under the rules for the re-export of tobacco, at any time within one month from the date of such permission, or, if it be not so re-exported may be destroyed by order of the Commissioner.

11. It shall not be lawful for any person to sell or offer for sale by retail any tobacco in the said town without a license from the Commissioner

of Customs, Salt, and Opium, or other officer duly empowered by Government in that behalf, which license shall be in force for a period of twelve calendar months from the date thereof, unless the person to whom the license is granted shall be deprived thereof under the provisions of this Act.

A fee of one rupee shall be paid for every such license.

12. Any sale of tobacco not exceeding in weight fourteen seers of eighty tolas to the seer shall be deemed to be a retail-sale within the meaning of this Act.

What to be deemed retail-sale.

13. It shall not be lawful for any licensed retail-dealer in tobacco to carry on the retail-sale of the same, or to keep any store of the same, except at such shop or other premises as may be specified in his license; and the name of every retail-dealer in tobacco, together with the number of his license; shall be written or printed in English, Guzrati, and Mahrathi, in plain and legible characters of not less than one inch in height, on a board to be affixed in a conspicuous manner in the front of the shop or premises where such retail-sale is carried on.

Name and number to be affixed to shop.

14. Every retail-dealer in tobacco shall, on or before the tenth day of each month, make to the Commissioner of Customs, Salt, and Opium, or other officer as aforesaid, a separate return for each shop or place of sale for which he holds a license, showing the quantity of tobacco on hand therein at the beginning of the preceding month, the quantity received during such month, and the persons from whom, and the dates on which, he received it, and the stock remaining at the close of such month;

and any retail-dealer who refuses or neglects to make such return, or makes a false return, shall be liable to be deprived of his license by the said Commissioner or other officer as aforesaid, and to pay a fine not exceeding two hundred rupees.

15. Every retail dealer in tobacco shall, on the same day on which he shall receive any tobacco into any such shop or place of sale, enter, in a book to be kept for that purpose, the weight of such tobacco, the day on which he receives the same, and the name of the person from whom, and the place from which, he receives it;

Retail-dealer to enter in book, weight, &c., of tobacco received.

and such book shall be open to the inspection of the Commissioner of Customs, Salt, and Opium, or other officer as aforesaid, or of any person authorized by the Commissioner or such officer to inspect the same;

Inspection of book.

and the Commissioner or other officer or person (as aforesaid) inspecting the said book may make any minute therein, or any extract therefrom, which he shall think fit ;

and any retail-dealer who neglects or refuses to comply with the provisions of this section shall, for every offence, be liable to be deprived of his license by the said Commissioner or other officer as aforesaid, and to pay a fine not exceeding two hundred rupees.

16. The Commissioner of Customs, Salt, and Opium, or other

Search-warrant.

officer as aforesaid, may issue a warrant under his hand and seal to any public officer, commanding him to enter and search, between sunrise and sunset, any building or place to be specified in the warrant, in which tobacco may be deposited under the provisions of this Act or in which the Commissioner or other officer as aforesaid has been credibly informed, which information shall be taken down in writing, that tobacco is deposited contrary to the provisions of this Act, and to seize and take away from thence any tobacco or other articles subject to confiscation under this Act.

17. The Commissioner of Customs, Salt, and Opium, or other

Power to arrest and detain.

officer as aforesaid, or any public officer authorized by the Commissioner or such officer, may arrest and detain any person carrying or having charge of any tobacco liable to confiscation under this Act, and

To search vehicles, &c.

may detain and search any vessel or package, and any boat or vehicle, containing or conveying, or supposed to contain or convey, any such tobacco.

18. All tobacco imported into the said town, or removed from

Confiscation of tobacco illegally imported, removed, &c.

one place to another, or kept within the said town, or found in the possession of any person in the said town, selling or offering any portion thereof for sale, contrary to the provisions of this Act, and every vessel in which such tobacco is contained, and every vehicle, boat, or animal, employed with the consent and knowledge of the owner or his servant in conveying the same, shall be liable to confiscation :

Provided always that it shall be lawful for the adjudicating

Mitigation of penalty.

officer to mitigate the penalty of confiscation herein provided, by commuting the same to the payment of any fine not exceeding the value of the goods liable to confiscation ; and every such fine may be enforced, if necessary, by the sale of the goods liable to confiscation.

19. Any person who shall illegally import, remove, or sell in

Penalty for illegal importation removal, sale, or possession.

the said town, any tobacco, or who shall knowingly have in his possession any tobacco, subject to confiscation under this

Act, shall be liable to a fine not exceeding ten times the value of such tobacco; and if the offender is a licensed retail-dealer, he shall be liable to be deprived of his license by the Commissioner of Customs, Salt, and Opium, or other officer as aforesaid.

Levy of fines and adjudication and sale of confiscations.

20. All confiscations and fines under this Act May be adjudicated and levied by any Magistrate of Police for the town of Bombay.

Goods adjudged liable to confiscation shall be sold under warrant of the Magistrate.

21. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the context repugnant to such construction:—

the words "town of Bombay" shall include all places within the islands of Bombay and Kolaba;

words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number;

words importing the masculine gender shall include females.

SCHEDULE A.

Form of Permit.

No.

A, B. has been permitted to remove from (Custom-House or licensed warehouse or shop No. , situated in Kalbadevi Street, to warehouse or shop No. , in Bazar Street) the undermentioned quantity of tobacco between sunrise and sunset on the day of in the year .

(Signed) _____

Commissioner of Customs, Salt, and Opium.

ACT NO. V. OF 1857.

Oriental Gas Company.

RECEIVED THE G -G'S ASSENT ON THE 13TH FEBRUARY, 1857.

An Act to confer certain powers on the Oriental Gas Company, Limited.

WHEREAS a Joint Stock Company has been lately formed for the purpose of introducing gas-works into India, which Company having been completely registered in England under the Act of Parliament of the eighth year of the reign of Her present Majesty, cap 110, has since been registered in England under "The Joint Stock Companies Act, 1856," with limited liability, and has duly obtained a certificate of incorporation under the name of the Oriental Gas Company, Limited; and whereas the said Company has erected gasworks on land granted for that purpose by Government in the vicinity of the town of Calcutta, and is engaged in the preparation of apparatus and materials for the manufacture and supply of gas for lighting the said town; and whereas it is expedient that powers and facilities should be given to the said Company to enable them to carry out their undertaking of lighting with gas the said town of Calcutta, which powers and facilities may hereafter be extended to the operations of the said Company in other towns and places; It is enacted as follows:—

1. In the town of Calcutta and its environs, and in any other town or place to which the provisions of this Act may hereafter be extended by a law to be passed for that purpose, the Oriental Gas Company, Limited, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place, within the same limits, pipes, conduits, service-pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas; and, for the purposes aforesaid, may remove and use all earth and materials in and under such streets and bridges; and they may, in such streets, erect any pillars, lamps, and other works, and do all other acts which the said Company shall, from time to time, deem necessary for supplying gas to the inhabitants of the said town of Calcutta and its environs, or other town or place as aforesaid, doing as little damage as may be in the execution of the powers hereby granted, and making compensation for any damage which may be done in the execution of such powers.*

Power to break up street, &c., under superintendence, and to open drains

2. Provided always that nothing herein shall authorize or

Company not to enter on private land without consent. empower the said Company to lay down or place any pipe or other works into,

through, or against, any building, or in any land not dedicated to public use, without the consent of the owners and occupiers thereof, except that the said Company may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe has been already lawfully laid down or placed in pursuance of this Act, and may repair or alter any pipe so laid down.

3. Before the said Company proceed to open or break up any

Notice to be given in writing of intention to break up street, &c. street, bridge, sewer, drain or tunnel, they shall give, to the Municipal Commissioners for the town of Calcutta, or other persons

under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

4. No. such street, bridge, sewer, drain, or tunnel, shall,

No street or drain to be broken up, except under superintendence, or on failure to superintend. except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their

officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan then according to such plan as shall be determined by a Magistrate; and such Magistrate may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the said Company to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always that, if the persons, having such control or management as aforesaid, and their officer fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the said Company's intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said Company may perform the work specified in such notice without the superintendence of such persons or their officer.

5. When the said Company open or break up the road or pave-

Streets broken up to be reinstated without delay. ment of any street or bridge, or any sewer drain, or tunnel, they shall, with all convenient speed, complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the

road or pavement, or the sewer, drain or tunnel so opened or broken up, and carry away the rubbish occasioned thereby; and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and maintained, against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up; and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

6. If the said Company open or break up any street or bridge or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the said Company are hereby authorized to perform such works without any superintendence or notice; or if the said Company make any delay in completing any such work, or in filling in the ground, or re-instating and making good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby; or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same shall have been made good, or such further time as aforesaid, they shall forfeit, to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made a sum not exceeding 50 rupees for every such offence, and they shall forfeit an additional sum, not exceeding 50 rupees, for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

7. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed; and the expense of executing the same shall be repaid to such persons by the said Company; and the amount of such expense shall, in case of any dispute about the same, be ascertained and recovered in Calcutta and in any other town or place subject to the jurisdiction of any of Her Majesty's Courts of Judicature, in the manner in which expenses are ascertained and recovered under Act XIV. of 1856, and in any town or place not within the jurisdiction of any of Her Majesty's Courts, in the same manner as damages are recoverable under this Act.

8. The clerk, engineer, or other officer duly appointed for the purpose by the said Company, may, at all reasonable times, enter any buildings or place lighted with gas supplied by the said Company, in order to inspect the meters, fittings, and works for regulating the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall, for every such offence forfeit to the said Company a sum not exceeding 50 rupees

9. If any person supplied with gas, or any person to whom any meter or fitting shall have been let for hire by the said Company, neglect to pay the rent due for the same to the said Company the said company may stop the gas from entering the premises of such person, by cutting off the service-pipes, or by such means as the said Company shall think fit, and recover the rent due from such person, together with the expenses of cutting off the gas, by action in any Court of competent jurisdiction.

10. In all cases in which the said Company are authorized to cut off and take away the supply of gas from any house or building or premises under the provisions of this Act, the said Company, their agents, or workmen, after giving twenty-four hours' previous notice to the occupier, may enter into any such house, building, or premises, between the hours of nine in the forenoon, and four in the afternoon, and remove and carry away any pipe, meter, fittings or other works, the property of the said Company.

11. Any meter or fitting let for hire by the said Company shall not be subject to distress for rent or revenue or any rate due upon the premises where the same may be used, nor be taken in execution under any process of a Court of law or equity, or any proceeding in insolvency against the person in whose possession the same may be.

12. Every person who shall lay, or cause to be laid any pipe to communicate with any pipe belonging to the said Company, without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the said Company is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the said Company, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for or shall otherwise improperly use or burn the gas, or shall supply any other person with any part of the gas supplied to him by the said Company, shall forfeit to the said Company the sum

of 50 rupees for every such offence, and also the sum of 20 rupees for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the said Company may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.

13. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the said Company for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas, supplied by the said Company, shall, for each such offence, forfeit to the said Company any sum not exceeding 50 rupees, in addition to the amount of the damage done.

14. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the said Company or under their control, shall pay such sum of money by way of satisfaction to the said Company for the damage done, not exceeding 50 rupees, as any Magistrate shall think reasonable.

15. If the said Company shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, pond, or place for water, or into any drain communicating therewith any washing or other substance produced in making or supplying of gas, or shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the said Company shall forfeit, for every such offence, a sum not exceeding 1,000 rupees; and they shall forfeit an additional sum not exceeding 500 rupees for each day during which such washing or other substance shall be brought or shall flow, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the said Company, by the person into whose water such washing or other substance shall be brought or shall flow or whose water shall be fouled thereby; and such penalties shall be paid to such last-mentioned person.

16. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the said Company, they shall immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the said Company shall not, within twenty-four hours next after service of such notice, effectually prevent the gas from escaping and wholly remove the cause of complaint, they shall, for every such offence, forfeit the sum of 50 rupees for each day during which the gas shall

be suffered to escape, after the expiration of twenty-four hours from the service of such notice.

17. Whenever any water shall be fouled by the gas of the said Company, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding 200 rupees, and a further sum not exceeding 100 rupees for each day during which the offence shall continue, after the expiration of twenty-four hours from the service of notice of such offence.

18. For the purpose of ascertaining whether such water be fouled by the gas of the said Company, the person to whom the water supposed to be fouled shall belong may dig up the ground, and examine the pipes, conduits, and works of the said Company: Provided that such person, before proceeding so to dig and examine shall give twenty-four hours' notice in writing to the said Company of the time at which such digging and examination is intended to take place, and shall give the like notice to persons having the control or management of the road, pavement, or place where such digging is to take place, and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay, or any non-feasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the said Company, for the purpose of laying their pipes.

19. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the said Company the expenses of the digging, examination and repair of the street or place disturbed in any such examination, shall be paid by the said Company; but if upon such examination, it appear that the water has not been fouled by the gas of the said Company, the person causing such examination to be made shall pay all such expenses, and shall also make good to the said Company any injury which may be occasioned to their works by such examination.

20. The amount of the expenses of every such examination and repair, and of any injury done to the said Company, shall, in case of any dispute about the same together with the costs of ascertaining and recovering the same, be ascertained and recovered in the manner prescribed for the ascertainment and recovery of expenses in section 7 of this Act.

21. Nothing in this Act contained shall prevent the said Company from being liable to an indictment for nuisance, or to any other legal proceedings to which they may be liable in consequence of making or supplying gas.

22. A copy of the original Deed of Association of the said Company, and of every other instrument registered under the said "Joint Stock Companies Act, 1856," so constituting the regulations of the said Company, and a copy of every special resolution of a general meeting whereby any change shall have been, or at any time shall be, made in the regulations of the said Company, shall be kept at the office of the said Company in Calcutta, and shall there be open to the inspection of all persons during the usual hours of business of the said office ; and a copy of such original Deed of Association, and of every other such instrument, and of every special resolution as aforesaid, shall also be deposited by the said Company as soon as it can be done after the passing of this Act, or after the making of any such special resolution hereafter to be made, in the office of the Registrar of Joint Stock Companies, or, if there be no such officer, in the office of the keeper of the records of the Supreme Court of Judicature at Fort William, and shall there be filed ; and an examined copy of any such filed copy as aforesaid, certified by and under the hand of the Registrar of Joint Stock Companies, or of the keeper of the records of the said Supreme Court, shall be good and sufficient evidence of each such original deed, instrument, or special resolution, in all actions, suits, and proceedings whatsoever, whether civil or criminal, to be had in any Court of justice, or before any Magistrate, or Revenue or other officer, and whether acting judicially or in any proceeding preliminary to a judicial inquiry, throughout the territories of the East India Company.

23. All services of mesne or other process, and all notices whatsoever, which, by law or by the practice of any Court wherein the said Company shall sue or be sued, are required to be made, served, or given for any purpose whatsoever to the said Company shall and may be made, served, and given, in addition to all ways and means by which the same may otherwise be legally made, served, and given, by leaving the same, addressed to the Managing Agent of the said Company, at the office in Calcutta of the said Company.

24. All penalties and forfeitures imposed by this Act, and all damages and expenses, the recovery of which is not specially provided for, may be recovered by summary proceeding before a Magistrate.

25. All penalties, forfeitures, damages, and expenses adjudged due under this Act, if the amount be not otherwise paid, may be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from such goods and chattels, after satisfying such amount and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have

been distrained; or instead of proceeding by distress and sale, or in case of failure to realize by distress the whole or any part of any penalties, forfeitures, damages, or expenses, imposed or incurred under the provisions of this Act, the person claiming such penalty, forfeiture, damage, or expenses, may sue the person liable to pay the same in any Court of competent jurisdiction.

26. No distress levied by virtue of this Act shall be deemed unlawful for want of form, &c. No distress unlawful for unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto; nor shall any such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

27. The following words and expressions used in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—
Interpretation.

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number.

Words importing the masculine gender shall include females.

The word "person" shall include a corporation, whether aggregate or sole.

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place.

The word "Magistrate" shall include any Magistrate of Police, and any Joint-Magistrate or other person lawfully exercising the powers of a Magistrate, acting at, or for, the place or district where the matter requiring the cognizance of any such Magistrate arises.

ACT NO. VII. OF 1857.*

The Madras Uncovenanted Officers Act, 1857.†

RECEIVED THE G.-G.'S ASSENT ON THE 1ST MAY, 1857.

An Act for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George.

WHEREAS the exigencies of the public service require the more extended employment of uncovenanted officers in the Revenue and Judicial Departments in the Presidency of Fort Saint George; It is hereby enacted as follows:—

Preamble.

1. The Governor of Fort Saint George in Council may appoint, in any zilla or district within the said Presidency, one or more uncovenanted Deputy Collectors with the powers hereinafter mentioned.

Power to appoint uncovenanted officers.

2. [Official oath or declaration].—*Repealed by Act X. of 1873.*

3. [Duties and powers of Deputy Collector].—*Repealed by Madras Act VII. of 1914.*

4. [Duties and powers of Deputy Magistrates].—*Repealed by Act XVII. of 1862.*

5. Nothing in this Act contained shall be held to disqualify any uncovenanted officer appointed under this Act from holding at the same time the offices of Deputy Collector and Deputy Magistrate.

One officer may hold both offices.

Note.—*Vide Madras Act VII. of 1914, s. 3.*

6. A Deputy Collector appointed under this Act shall not be dismissed from office without the sanction of the Governor in Council. Whenever there may be reason to believe that a Deputy Collector is disqualified by neglect, incapacity, or corruption for continuance in office, a report shall be submitted by the Collector or Magistrate through the proper channel for the consideration and orders of the Governor in Council, who shall be competent to suspend such Deputy Collector, and order a further enquiry into his conduct, or to direct his immediate dismissal, as may appear just and proper.

Rules regarding dismissal of Deputy Collectors.

* Act VII. of 1857 has been repealed, so far as it relates to Deputy Magistrates, by Act XII. of 1873. It has been declared to apply to the whole of the Madras Presidency except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

† This short title have been given by Act XI. of 1901.

ACT NO. X. OF 1857.

The Santhal Parganas Act, 1857.*

RECEIVED THE G.-G.'S ASSENT ON THE 20TH MAY, 1857.

An Act to amend Act XXXVII. of 1855.

WHEREAS by Act XXXVII. of 1855† certain districts described in the schedule to the said Act were removed from the operation of the general Regulations and Acts; and whereas it is expedient to make certain alterations in respect to the districts so removed; It is enacted as follows:—

‡ All the provisions of the said Act, which are applicable to the districts described in the said schedule, shall, after the passing of this Act, be applicable only to the districts described in the schedule to this Act, in the same manner as if the schedule to this Act had been the schedule to Act XXXVII. of 1855.

SCHEDULE.

[See *supra*, p. 148.]

ACT NO. XI. OF 1857.‡

The State Offences Act, 1857.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH MAY, 1857.

An Act for the prevention, trial, and punishment of offences against the State.

WHEREAS it is necessary to make due provision for the prevention, trial, and punishment of offences against the State; It is enacted as follows:—

* This short title has been given by Act I. of 1903.

† Act X. of 1857 has been declared in force throughout the Presidency of Madras except as regards the Scheduled Districts, by Act (XV. of 1874), s. 4.

‡ The rest of s. 1, which has been repealed by Act XIV. of 1870, s. 1, has been omitted.

§ Act XI. of 1857 has been declared to be in force in the whole of British India except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared in force—

in Upper Burma generally (except Shan States) by Act (XIII. of 1898), s. 4;
in the Arakan Hill District by Reg. (IX. of 1874) s. 3;
in Kachin Hill-tracts, as regards Hill tribes by Reg. (I. of 1895), s. 3;
in certain tracts in the Chin Hills by Reg. (V. of 1896), s. 3;
in British Baluchistan by Reg. (I. of 1890), s. 3;

1, 2. [*Punishment for rebellion for waging war against Government: Punishment for harbouring or concealing offenders*].—*Repealed by Act XVII. of 1862.*

3. *Clause 1.*—Whenever the Executive Government of any Presidency or place* shall proclaim that any district subject to its government is or has been in a state of rebellion,† it shall be lawful for such Government to issue a commission for the trial of all persons who shall be charged with having committed within such district, after a day to be specified in the commission, any* crime against the State, or murder, arson, robbery, or other heinous crime against person or property.

Clause 2.—The Commissioner or Commissioners authorized by any such commission may hold a Court in any part of the said district mentioned in the commission, and may there try any person for any of the said crimes committed within any part thereof; it being the intention of this Act that the district mentioned in the commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one district.

in Angul and the Khondmals by Reg. (I. of 1894), s. 3; and in the Chittagong Hill-tracts by Reg. (I. of 1900), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	See <i>Gazette of India</i>	1880, Pt. I., p. 672.
West Julpauri and the Western Dvars	...	Ditto	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	Ditto	1881, Pt. I., p. 504.
Kumaon and Garhwal	...	Ditto	1876, Pt. I., p. 605.
The scheduled portion of the Mirzapur District	...	Ditto	1879, Pt. I., p. 383.
Jaunsar Bawar	...	Ditto	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	Ditto	1881, Pt. I., p. 48.
The District of Lahaul	...	Ditto	1886 Pt. I., p. 301
The Scheduled Districts of the Central Provinces	...	Ditto	1879, Pt. I., p. 771.
The District of Silhat	...	Ditto	1879 Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)	...	Ditto	1897 Pt. I., p. 299.
The Porahat Estate in the Singhbhum District	...	Ditto	1897 Pt. I., p. 1059.

It has been extended, under the same Act, to the North-Western Provinces and to the Tarai.—*See Gazette of India*, 1876, Pt. I., p. 505.

* Certain words, repealed by Act XII. of 1876, have here been omitted

† That is, a disturbed district, "in which any great interval between conviction and punishment must deprive the punishment of its due effect."—Mr. Peacock's Statement of Objects and Reasons,

4. It shall be lawful for the Executive Government, by such commission, to direct that any Court held under the Commissioner shall have power, without* the assistance of assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by law for such crime; and that the judgment of such Court shall be final and conclusive; and that the said Court shall not be subordinate to the Sadr Court.

5. If a commission be issued under the authority of this Act, any Magistrate within the district which is described in the commission may commit persons charged with any of the aforesaid crimes within such district for trial before a Court to be held under this Act.

6. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural born subjects born in Europe, or of the children of such subjects.

7 to 10. [*Possession, &c., of Arms*].—*Repealed by Act XII. of 1876.*

11. The word "Magistrate" in this Act shall include any person* specially authorized by the Executive Government to exercise the powers vested in a Magistrate by this Act.

ACT NO. XIII. OF 1857.†

The Opium Act, 1857.‡

RECEIVED THE G.-G.'S ASSENT ON THE 6TH JUNE, 1857.

An Act to consolidate and amend the law relating to the cultivation of the poppy and the manufacture of opium in the Presidency of Fort William in Bengal, "and the territories under the administration of the Chief Commissioner of Oudh."§

WHEREAS the existing law relating to the cultivation of the poppy and the manufacture of opium on account of Government is in some respects

* Certain words, repealed by Act XII of 1876 have here been omitted.

† Act XIII. of 1857 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 6. It has also been declared in force, by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, s. 3, in the Santal Parganas, in the Central Provinces (ss. 21 to 23 25 to 29) by Act XX. of 1875, s. 3; and under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalspaiguri the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum and the Kolhan; also in the District of Silhat.

inconsistent with the practice which now obtains under agreement between the Opium Agents and the cultivators, and it is expedient that such inconsistency should be removed; and whereas it is also expedient|| that the laws for preventing the illicit cultivation of the poppy and for regulating the cultivation of the poppy and the manufacture of opium on account of Government, should be consolidated and amended: It is enacted as follows:—

1. [*Laws repealed*]—*Repealed by Act XIV. of 1870.*

2. [*Prohibition of poppy-cultivation and opium-manufacture*].—*Repealed by Act I. of 1878.*

3. The superintendence of the provision of opium for Govern-

Officers entrusted with ment shall be entrusted to Agents or other superintendence of provi- officers, being covenanted servants of the sion of opium. Company duly appointed by Government in that behalf, who shall perform the duties connected therewith under the control and direction of the Board of Revenue "of the United Provinces of Agra and Oudh."¶

The Agents or other officers as aforesaid shall be assisted by Deputy Agents and Sub-deputy Agents, Assistants to Agents. or such other officers, covenanted or uncovenanted, as the Government may from time to time appoint for the purpose.

The Collector of the district shall ordinarily, and unless Gov-
Collector *ex-officio* Deputy ernment shall otherwise direct, be *ex-officio* Deputy Agent; and the relative duties and powers of the Deputy Agents and Sub-deputy Agents shall be from time to time regulated by the said Board with the sanction of Government.

4. The Opium Agents, and their subordinate officers of every
Officers amenable to Civil description, are declared amenable to the Courts. Civil Courts for all acts done by them in their official capacity, except as otherwise herein provided:

Act XIII. of 1857 has also been declared, by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces except the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in Kumaon and Garhwal and the scheduled portion of the Mirzapur District, and extended, by notification under the same Act, to the Tarai Parganas

For declaration as to Act XIII. of 1857 being in force in Oudh, *see* Act XVIII. of 1875, s. 3 (*), as amended by Act XII. of 1891

† This short title has been given by Act I. of 1903.

§ In the title the words quoted have been inserted by the Oudh Laws Act (XVIII. of 1876), Sch. II.

|| Here certain words, repealed by Act XII. of 1891, Sch. I, have been omitted,

¶ The words within quotations have been substituted by Act I. of 1911.

But no suit shall be instituted against an Agent, or any subordinate officer, for any act done in his official capacity, unless the person who shall consider himself aggrieved by the act of such Agent or officer shall have first made application for redress to the Agent himself.

In the event of such person not being satisfied with the order which the Agent may pass upon his application, it shall then be competent to him either to lay his case by petition before the Board of Revenue, or at once to seek redress in the Civil Court.

5. The Opium Agents shall not, in their official capacity, institute any suit in a Civil Court without the sanction to suit by the Agent, previous sanction of the Board of Revenue.

6. In cases in which the Board of Revenue may judge it expedient, or in which they may be so directed by Government, they may take upon themselves, or entrust to an officer specially appointed for the purpose, the superintendence of the prosecution or defence of any suit or appeal in which they or an Agent, or any other officer subordinate to them, may be engaged, instead of leaving such superintendence to the Agent or any other officer.

Note.—*Vide* sections 3 and 4 of Act I. of 1911.

7. The Board of Revenue, with the sanction of Government, shall, from time to time, fix the limits within which licenses may be given for the cultivation of the poppy on account of Government.

With the like sanction they shall, from time to time, fix the price to be paid to the cultivators for the opium produced.

The price shall be fixed at a certain sum per seer of eighty tolas for opium of a certain standard consistence, and shall be subject to a rateable reduction, according to a scale sanctioned by the Board of Revenue, for opium of a consistence below the standard.

8. The Sub-deputy Agents or other officers entrusted with the superintendence of the cultivation shall, at the proper period of the year, issue licenses to the cultivators who may choose to engage to cultivate the poppy and to deliver the produce to the officers of Government at the established rates.

Every license shall specify the number of bighas which the party engages and is authorized to cultivate, and shall be in such form as the Agent, with the sanction of the Board of Revenue, may direct.

A counterpart-engagement, in conformity with the tenor of the license, shall be taken from the cultivator.

9. It shall be at the option of every cultivator to enter into engagements for the cultivation of the poppy or not as he may think fit; and any Sub-deputy Agent or other officer as aforesaid, or any inferior officer employed in the provision of opium, who shall compel, or use any means to compel, any cultivator to enter into engagements, or to receive advances, for the cultivation of the poppy, shall be liable to be dismissed from his situation.

Cultivator to have option to engage to cultivate or not. Officers compelling cultivator to engage liable to be dismissed

It shall be at the option of the Sub-deputy Agent or other officer as aforesaid to withhold a license from any cultivator whenever he may think proper so to do.

Sub-deputy Agent may withhold license to cultivate.

Any person to whom a license has been refused may appeal to the Agent, and the decision of the Agent shall be final.

Appeal.

10. If it shall be found that any cultivator who has received advances from Government has not cultivated the full quantity of land for which he received such advances, he shall be liable to a penalty of three times the amount of the advances received for the land which he has failed to cultivate; and the said penalty may be adjudged by the Deputy Agent or Collector, on the complaint of the Sub-deputy Agent or other officer as aforesaid.

Penalty on cultivator receiving advances and not cultivating full quantity of land.

Adjudication of penalty.

Any person dissatisfied with the judgment of the Deputy Agent or Collector may appeal to the Agent, and the decision of the Agent shall be final.

Appeal.

11. All opium, the produce of land cultivated with poppy on account of Government, shall be delivered by the cultivators to the Sub-deputy Agents or other district-officers, or shall be brought by them to the sadr factory, as the Agent may direct.

Delivery of opium produced.

And no such opium shall be liable to be distrained or attached by a zemindar or other proprietor, or a farmer of land, for the recovery of arrears of rent, or by any other creditor of a cultivator under any order or decree of Court, but the sum due to the cultivator on account of such opium may be attached by order of Court in the hands of the Agent or of the district-officer under the rules in force for such attachments.

Value thereof may be attached.

12. All opium delivered by the cultivators to the Sub-deputy Agent or other district-officer shall, before it is forwarded to the sadr factory, be weighed, examined, and classified according to its quality and consistence by that officer, or his assistant if duly authorized by the Agent in that behalf, in the presence of the cultivators and in conformity with rules sanctioned by the Board of Revenue.

Any cultivator who may be dissatisfied with the classification of the district-officer shall be at liberty to take his opium to the sadr factory, or to have it forwarded thither by such officer, separate from the opium respecting which no dispute has arisen.

13. All opium forwarded by the district-officers to the sadr factory, and all opium delivered at the sadr factory by the cultivators, shall be there weighed and examined by the Opium Examiner or other officer duly authorized in that behalf, agreeably to rules sanctioned by the Board of Revenue; and the quality and consistence of the opium, and the deductions from, or additions (if any) to, the standard-price to be made in accordance with the said rules, shall be determined by the result of such examination.

The decision of the Examiner, or of the Agent in cases in which a reference to the Agent may be prescribed by the said rules, shall be final and conclusive, and not open to question in any Court.

14. When opium delivered by a cultivator, either to a district-officer or at the sadr factory, is suspected of being adulterated with any foreign substance, it shall be immediately sealed up pending examination by the Opium Examiner, and notice of such intended examination shall be given to the cultivator.

If upon examination the opium shall be found to be so adulterated, the Agent, on the report of the Examiner, may order that it be confiscated, and the order of the Agent shall be final, and not open to question in any Court.

15. The weights and scales made use of in the sadr factories and at the district kothis shall be provided by the Board of Revenue.

Every district-officer shall annually, before beginning to weigh the opium of the season, examine the weight and scales in use in his district, and shall report the result of such examination to the Agent.

The Agent shall make a similar examination of the weights and scales of the sadr factory, and shall report the result to the Board.

No weights or scales shall be made use of which on any such examination have not been found to be strictly accurate.

It shall be the duty of all officers who may superintend the weighing of opium to see that the opium is weighed fairly with an even beam, and, the practice of taking excess weight for the purpose of turning the scale, or as an allowance for dryage and wastage, is hereby prohibited

16. The accounts of the cultivators, shall be adjusted annually by the district-officers as soon after the conclusion of the weighing and examination as possible; and any balance that may remain due from any cultivator, or from any mahato or intermediate manager, may be recovered by the district-officer by distress and sale of the property of the defaulter or of his surety, in the same manner and under the same rules as the property of defaulting cultivators in estates held khas may be distrained and sold by the Collector for the recovery of an arrear of rent or revenue:

Adjustment of cultivator's accounts, and recovery of balance by distress.
 Provided that no warrant of distress and sale shall be issued by any district-officer without the sanction of the Agent previously obtained.

17. Any officer of the Opium Department who shall receive any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatsoever, from any cultivator or from any other person employed or concerned in the provision of opium, other than the authorized allowances of his situation, shall be dismissed from his office, and, on conviction before a Magistrate, shall be liable to a fine not exceeding five hundred rupees.

18. If any zemindar or other proprietor of land, or any farmer of land, shall exact from any raiyat on account of his poppy-land any illegal cess or any higher rate of rent than he is lawfully entitled to demand, the raiyat, or the Sub-deputy Agent or other district-officer on his behalf may institute a suit before the Collector, and recover from such proprietor or farmer the sum exacted by him in excess of his lawful demand, together with a penalty of treble the amount of such excess; and such suit shall be tried according to the rules prescribed for suits instituted before a Collector relating to arrears or exactions of rent.

19. Any cultivator entering into engagements for the cultivation of the poppy on account of Government who may embezzle or otherwise illegally dispose of, any part of the opium produced, shall be liable to a penalty not exceeding ten times the fixed price of the opium which

he may be proved to have so disposed of, or to a fine not exceeding five hundred rupees if the amount of the said penalty be less than that sum, and the opium, if found, shall be liable to confiscation.

20. Any person purchasing or receiving any opium from a cultivator or other person who may have entered into engagements for the cultivation of the poppy, or who may be employed in the provision of opium on account of Government, or bargaining for the purchase of opium with such cultivator or person, or in any way causing or encouraging such cultivator or person to embezzle or illegally dispose of any opium, and any officer of the Opium Department conniving in any way at the embezzlement or illegal disposal of any opium, shall be liable to a fine not exceeding one thousand rupees, unless the opium purchased, bargained for, or illegally disposed of, shall exceed the weight of thirty-one seers and a quarter, in which case the fine may be increased, at a rate not exceeding thirty-two rupees per seer for all such opium in excess of that weight; and the opium, if found, shall be liable to confiscation.

21.* Any person who shall cultivate the poppy without license from a Sub-deputy Agent or other officer duly authorized in that behalf, and any person who shall in any way cause, encourage, or promote, such illegal cultivation, shall be liable to a fine not exceeding five hundred rupees, unless the quantity of land so illegally cultivated shall exceed twenty bighas, in which case the fine may be at the rate of twenty-five rupees per bigha; and the poppy-plants shall be destroyed, or, if any opium have been extracted from them, it shall be seized and confiscated.

If the opium shall have been extracted and shall not be seized, the offender shall be liable to a further fine not exceeding the rate of thirty-two rupees per bigha of land illegally cultivated.

22.* All proprietors, farmers, tahsildars, gumashtas and other managers of land, shall give immediate information to the police, or abkary-darogas, or opium gumashtas or to the Magistrates, Collectors or officers in charge of the abkari-mahal, or to the Agents, their Deputies, or Sub-deputies, of all poppy which may be illegally cultivated within the estates or farms held or managed by them; and every proprietor, farmer, tahsildar, gumashta, or other manager of land, who shall knowingly neglect to give such information, shall be liable to the penalties for illegal cultivation prescribed in the last preceding section.

* Ss. 21 to 23 and 25 to 29 of Act XIII. of 1857 have been declared to be in force in the Central Provinces by the Central Provinces Laws Act (XX. of 1875).—See s. 3 and Sch. to Act XX. of 1875.

23.* All police and abkari-daroghas and opium-gumashtas

Duty of police and other officers to give information of illegal cultivation. and all native officers of Government of whatever description, and all chaukidars, paiks, and other village police-officers, shall give immediate information to the authority to which they are subordinate when it may come to their knowledge that any land has been illegally cultivated with poppy; and such authority shall transmit the information, to the Sub-deputy Agent or other officer superintending the cultivation of the poppy if in a district where the poppy is cultivated on account of Government, or to the Collector or officer in charge of the abkari-mahal if in a district where the poppy is not so cultivated.

Every police or abkari-darogha, opium-gumashta native officer, chaukidar, or other police-officer as aforesaid, who shall neglect to give such information, or shall in any respect connive at the illicit cultivation of the poppy, shall be liable to a fine not exceeding one thousand rupees if the offender be an officer of the Opium Department, or in any other case to a fine not exceeding five hundred rupees.

24. Whenever a police or abkari darogha or opium-gumashta

Police or abkari darogha shall receive intelligence of any land within his jurisdiction having been illegally cultivated with poppy, he shall immediately proceed to the spot, and, if the information be correct, shall attach the crop so illegally cultivated, and report the same without delay to the authority to which he may be subordinate.

He shall at the same time take security from the cultivator of the said land for his appearance before the Magistrate; and in the event of such cultivator not giving the required security, he shall send him in custody to the Magistrate.

NOTE.

This section does not authorize any police-officer unconditionally to arrest a person against whom the information mentioned in this section had been received.—24C, 691.

25.* Proprietors, farmers, tahsildars, gumashtas and other

Landholders, &c., may attach in cases of illegal cultivation. managers of land, shall be at liberty to attach any poppy grown in opposition to the provisions of this Act in any estate or farm held or managed by them, and shall immediately report such attachment to the nearest police or abkari-darogha or opium-gumashta, who shall thereupon proceed in conformity with the rules contained in the last preceding section.

* Ss. 21 to 23 and 25 to 29 of Act XIII. of 1857 have been declared to be in force in the Central Provinces by the Central Provinces Laws Act (XX. of 1875).—See s. 3 and Sch. to Act XX. of 1875.

26.* Except as otherwise herein provided, all fines, penalties, and confiscations prescribed by this Act, shall be adjudged by the Magistrate on the information of the Deputy Agent or Sub-deputy Agent in districts in which the poppy is cultivated on account of Government, and in other districts on the information of the Collector or officer in charge of the abkari-mahal:

Provided that no information of an offence against this Act shall be admitted unless it be preferred within the period of one year after the commission of the offence to which the information refers.

NOTE.

The distribution of a penalty adjudged by a Magistrate under s. 26 is no part of his judgment and therefore not a matter over which the High Court can exercise control.—16 W. R. Cr. 65.

27* When any person is sentenced to pay any fine or penalty under this Act, such person, in default of payment of the same, may be imprisoned by order of the Magistrate for any time not exceeding six months, or until the fine is sooner paid.

28.* Whenever any person shall be convicted of an offence against this Act after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

29.* Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any fine or penalty prescribed by this Act unless such person be an officer of Government or a village police-officer convicted of an offence under section 17, 20, or 23, shall be imprisoned in the civil jail.

30. One-half of all fines and penalties levied from persons convicted of offences under sections 19, 20, and 21 of this Act, together with a reward of one rupee eight annas for each seer of opium confiscated and declared by the Civil Surgeon to be fit for use, shall, upon adjudication of the case, be awarded† to the officer or officers who apprehended the offender, and the other half of such fines and forfeitures together with a reward of one rupee eight annas for each seer of opium confiscated as aforesaid, shall be given to the informer.

* Ss. 21 to 23 and 25 to 29 of Act XIII of 1857 have been declared to be in force in the Central Provinces by the Central Provinces Laws Act (XX. of 1875).—See s. 3. and Sch. to Act XX. of 1875.

† 8 B. L. R. App. 8.

If in any case the fine or penalty is not realized, the Board of Revenue may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to them fit.

31. The Governor-General of India in Council may authorize, by an order of Government, the cultivation of the poppy and the manufacture of opium in any district or districts without license from a Sub-deputy Opium Agent or other officer of Government; and when such order has been published, all the provisions of this Act shall cease to have effect in such district or districts:

Provided always that the Government may prescribe rules for the delivery of the opium so produced to officers of Government appointed to receive it; and when such rules have been passed, any cultivator or other person engaged in the cultivation of the poppy and manufacture of opium who shall dispose of any opium otherwise than is allowed by such rules, and any person who shall purchase or receive any such opium in contravention of the said rules, shall be subject to the penalties prescribed in section 19 of this Act; and such penalties may be adjudged by a Magistrate on the information of any officer of Government or of any other person.

ACT NO. XXI. OF 1857.*

The Howrah offences Act, 1857†

RECEIVED THE G.-G.'S ASSENT ON THE 10TH JULY, 1857.

An Act to make better provision for the order and good government‡ of the station of Howrah.

WHEREAS Acts have been passed for regulating the police and for the conservancy and improvement of the town of Calcutta and of the other Presidency towns; and whereas large portions of the station of Howrah are not less populous than parts of the said town, and it will conduce to the order and good government of the said‡ station that some of the provisions of the said Acts, with certain necessary modifications, should be extended to the said‡ station; It is enacted as follows:—

* Act XXI. of 1857 has been repealed in so far as it applied to the suburbs of the town of Calcutta by Ben. Acts II. of 1866 (s. 52) and VIII. of 1863 (s. 1).

† This short title has been added by Act I. of 1903.

‡ Certain words in the title, the preamble, and s. 1, referring to the suburbs of Calcutta, repealed by Act XVI. of 1874, s. 1, have here been omitted.

1. Whoever is charged with having committed any of the offences mentioned in this Act within the limits of the said* station, as described in the schedule hereunto annexed, may be tried, for any such offence, by the Magistrate within whose jurisdiction the offence is alleged to have been committed, and, on conviction, may be sentenced by such Magistrate to the punishment hereinafter prescribed for the offence.

2. *Clause 1.*—Whoever has in his possession, or conveys in any manner, any thing which may be reasonably suspected of being stolen or fraudulently obtained, shall, if he fail to account satisfactorily how he came by the same, be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Clause 2.—If any person, charged with having or conveying any thing stolen or fraudulently obtained, shall declare that he received the same from some other person, or that he was employed as a carrier, agent or servant, to convey the same for some other person, the Magistrate may cause every such other person, and also, if necessary, every former or pretended purchaser or other person through whose possession the same shall have passed (provided that such other person shall be alleged to have had possession of the same within the jurisdiction of such Magistrate) to be brought before him and examined, and shall examine witnesses touching the same;

and if it appear to such Magistrate that any person so brought before him had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, such person shall be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

3. Any person found, between sunset and sunrise, armed with any dangerous or offensive instrument whatsoever with intent to commit any offence against the person or property of another; any reputed thief found, between sunset and sunrise, on board any vessel or boat, or lying or loitering in any bazar, street, road, yard, thoroughfare, or other place, who shall not give a satisfactory account of himself; any person found, between sunset and sunrise having his face covered or otherwise disguised, with intent to commit any such offence as aforesaid; any person found, between sunset and sunrise, in any dwelling-house or other building whatsoever, without being able satisfactorily to account

* Certain words in the title, the preamble, and s. 1, referring to the suburbs of Calcutta repealed by Act XVI. of 1874 s. 1, have here been omitted.

for his presence therein ; and any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person) any implement of house-breaking, shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months ; and any such person may be taken into custody by any police-officer without a warrant.

4 to 6. [*Penalty for carrying arms without authority ; order for maintenance of wives and children ; penalty for harbouring deserters from merchant-vessels*].—*Repealed by Ben. Act III. of 1884, s. 2.*

7. On the complaint of three or more householders, that a
 Brothels. house in their immediate neighbourhood is used as a common brothel or lodging-house for prostitutes or disorderly persons of any description, to the annoyance of the respectable inhabitants of the vicinity, the Magistrate may summon the owner or tenant of the house to answer the complaint ; and on being satisfied that the house is so used, and is therefore a source of annoyance and offence to the neighbours, may order the owner or tenant to discontinue such use of it ; and, if he shall fail to comply with such order within five days, may impose upon him a fine to the extent of twenty-five rupees for every day thereafter that the house shall be so used.

8, 9. [*Licenses for retail sale of spirituous liquors ; revocation of license*].—*Repealed by Ben. Act III. of 1884, s. 2.*

10. Whoever, being the owner or occupier, or having the use,
 Penalty for owning, or of any house, room, or place, keeps or uses keeping, or having charge the same as a common gaming-house ; and of, a gaming-house, &c. whoever, being the owner or occupier of any house or room, knowingly and wilfully permits the same to be kept or used by any other person as a common gaming-house ; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, room, or place so kept or used ; and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, room, or place, shall be liable to a fine not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

11. Whoever is found in any such house, room, or place,
 Penalty for being found playing in a gaming-house. playing or gaming with cards, dice, counters, money, or other instruments of gaming or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding one hundred rupees or to imprisonment, with or without hard labour, for any term not exceeding one month ; and any person found in any common gaming-house during any gaming or playing therein shall be pre-

sumed until the contrary be proved, to have been there for the purpose of gaming.

12. If the Magistrate upon information on oath and after such enquiry as he may think necessary, has reason to believe that any house, room or place is used as a common gaming-house he may, by his warrant, give authority to any superior officer of police to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, room, or other place; and to take into custody all persons whom he finds therein, whether or not then actually gaming; and to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein; and to search all parts of the house room, or place which he shall have so entered, when he has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he so takes into custody; and to seize and take possession of all instruments of gaming found upon such search.

13. On conviction of any person for keeping any such common gaming house or being present therein for the purpose of gaming, all the instruments of gaming found therein shall be destroyed by order of the Magistrate, who may also order all or any of the securities for money, and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof, with all moneys seized therein, to be forfeited, or, in his discretion may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

14. The Magistrate may direct any portion, not exceeding one-fourth, of any fine which shall be levied under sections 10 and 11 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited, under section 13, to be paid to an informer.

15. A police-officer may apprehend without warrant any person found gaming with cards, dice, counters, money, or other instruments of gaming, in any public street, place, or thoroughfare; and such person shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for any term not exceeding one month; and such instruments of gaming and money shall be forfeited.

15A.* Nothing in sections 10 to 15 shall apply to game of mere skill, wherever played.

* Section 15A has been added by Act IV. of 1913.

16, 17. [*Fawnbrokers to report stolen property; when to be deemed receivers of stolen goods*].—*Repealed by Ben. Act III. of 1884, s. 2.*

18. Whoever manufactures gunpowder, or without a license Manufacture or possession of gunpowder. from the Magistrate has in his possession, in any house, shop, warehouse, or other building, at any one time, a greater quantity of gunpowder than ten pounds, shall be liable to a fine not exceeding two hundred rupees, and also to forfeit such gunpowder so manufactured or possessed, together with the vessel or receptacle in which it may be contained.

19. The Magistrate may grant to any person a license for the Licenses by Magistrate for sale and deposit of gunpowder, &c. sale or keeping in deposit of any quantity of gunpowder not exceeding fifty pounds, on such conditions, and for such term not exceeding one year, as shall be specified in the license; and any person who shall be guilty of a breach of any of such conditions shall be liable to a fine not exceeding one hundred rupees, and to forfeit all gunpowder so kept in deposit contrary thereto, and the vessels containing it, and also to forfeit his license.

20. Whoever is found drunk and incapable of taking care of himself, or is guilty of any riotous or indecent behaviour in any street or thoroughfare, or in any place of public amusement or resort, and whoever is guilty of violent behaviour in any police-office, shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

21. Whoever wilfully and indecently exposes his person, or commits a nuisance by easing himself in or by the side of or near to any public street or thoroughfare or place, shall be liable to a fine not exceeding ten rupees, or, in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

22. Whoever, in any public road, street, thoroughfare, or place, begs or applies for alms, or exposes or exhibits any sores, wounds, bodily ailment, or deformity, with the object of exciting charity or of obtaining alms; or whoever seeks for or obtains alms, by means of any false statement or pretences, shall be liable to imprisonment, with or without hard labour, for any term not exceeding one month.

23. Whoever, in any public street, road, thoroughfare, or place of public resort, commits any of the following offences, shall be liable to a fine not exceeding twenty rupees:—
Penalty for committing, in public streets, the offences of riotous or negligent driving or riding:

i.—Whoever drives or rides any animal, or drives any vehicle, in a manner so rash or negligent as to indicate a want of due regard for the safety of others :

ii.—Whoever negligently lets loose any horse, or suffers to be
 Letting loose horses, at large any ferocious dog without a muzzle,
 ferocious dogs, &c. or sets on or urges any dog or other animal
 to attack, worry, or put in fear, any person, horse, or other
 animal :

iii.—Whoever, being in charge of a cart, carriage, or horse,
 Leaving cart, &c., with- leaves it at such a distance as not to have
 out control : the same under due control :*

iv.—Whoever fastens any animal so as
 Obstructing passengers : to cause obstruction or danger to passen-
 gers :

v.—Whoever cruelly beats, abuses, or
 Ill-treating animals : tortures any animal :

vi.—Whoever sets fire to or burns any straw or other matter,
 Lighting fires, discharg- or lights any bonfire, or wantonly discharges
 ing guns, fire-works, &c. any fire-arm or air-gun, or lets off or throws
 any fire-work, or sends up any fire-balloon.

24. [*Beating drums, tomtoms, &c.*].—*Repealed by Ben. Act III. of 1884, s. 2.*

25 to 32. [*Penalty for depositing dirt on street ; allowing sewerage to flow on street, &c.*].—*Repealed by Ben. Act V. of 1876, s. 2.*

33 to 37. [*Houses in dangerous state ; sale of materials, &c.*].—*Repealed by Ben. Act III. of 1884, s. 2.*

38. [*License of public necessities*].—*Repealed by Ben. Act V. of 1876, s. 2.*

39. [*Neglecting private drains*].—*Repealed by Ben. Act III. of 1884, s. 2.*

40 to 45. [*Penalty for fouling water ; power to fill up unwholesome tanks, &c.*].—*Repealed by Ben. Act V. of 1876, s. 2.*

46. [*Unclean slaughter-houses*].—*Repealed by Ben. Act III. of 1884, s. 2.*

47, to 50. [*Penalty for establishing offensive trades ; constructing burial grounds ; power to close such burial grounds ; stray dogs*].—*Repealed by Ben. Act V. of 1876, s. 2.*

* Repealed, in the town and suburbs of Calcutta, by Ben. Act. I. of 1864, as regards drivers of hackney-carriages under that Act.

51. Any police-officer may arrest without a warrant any person committing in his view any offence against this Act, if the name and address of such person be unknown to him.

Police-officer may arrest without warrant on view of offence.

52. Any police-officer may take into custody, without a warrant, any person who is charged with committing an aggravated assault, in every case in which he shall have good reason to believe that such assault has been committed, although not in his view, and that, by reason of the recent commission of the offence, a warrant could not have been obtained for the apprehension of the offender.

Police may take into custody, without warrant, persons charged with recent aggravated assault.

53 Every person taken into custody without a warrant by a police-officer under this Act shall be taken to the nearest police-office in order that such person may be detained until he can be brought before the Magistrate, or until he shall enter into recognizances, with or without sureties, for his appearance before the Magistrate

Persons taken into custody by police without warrant may be detained in police-office until brought before Magistrate or bailed.

Any person so detained and not entering into recognizances shall be carried before the Magistrate within twenty-four hours from the time of his being taken into custody.

54. Upon any information or complaint laid before the Magistrate of any offence committed against this Act, the Magistrate may summon the person charged to appear at a time to be mentioned in the summons; or, if he see sufficient cause for so doing, may issue a warrant for his apprehension.

Procedure on information or complaint laid before Magistrate of offence against Act.

The provisions of the general Regulations of the Bengal Code and Acts of the Government of India for the time being in force, relative to the issue and service of summonses and warrants, to the summons, attendance, and examination of witnesses, and generally to the trial of cases, to the recovery of fines and penalties, and to appeals against orders and sentences passed by a Magistrate, shall be applicable to all cases under this Act:

Provided that, in all cases of offences punishable with fine only, if after due service of summons the person charged shall not appear in pursuance thereof, the Magistrate, at his discretion, may hear and determine the case in his absence.*

55. In all cases where any costs or expenses are by this Act directed to be paid, the amount of the same shall be ascertained and determined by the

Recovery of costs or expenses.

* The second proviso of s. 54, repealed by Act. XII. of 1891, Sch., I., has been omitted.

Magistrate; and the Magistrate may, for that purpose, summon the parties, and examine them and the witnesses on their behalf; and such amount, together with the costs of the enquiry, shall be recoverable in the same manner as fines may be recovered.

56. Any Joint Magistrate or Deputy Magistrate duly authorized to exercise the powers of a Magistrate, and any Assistant vested with special powers, may, in cases referred to him by the Magistrate, exercise all the powers, vested in a Magistrate by this Act.

57. All fines imposed and levied under this Act shall be applied in aid of any fund applicable to police and conservancy purposes in the said station; and all costs and expenses which the Magistrate is hereby authorized to incur, shall be paid from and repaid to such fund; or, if there be no such fund, all such fines as aforesaid shall be applied by the Magistrate to the cleansing or otherwise improving of the said station.

58. [*Act to supersede provisions of Act XXI. of 1841*].—*Repealed by Act XII. of 1891, Sch. I.*

59. In the construction of this Act, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; words importing the masculine gender shall include females.

SCHEDULE.*

Of Places included in the Station of Howrah.

STATION OF HOWRAH.

- Howrah (including)
Panchanantala.
Julahapara.
Chandmari (with Tandel Bagan).
North Betra.
South Betra.
Ichapur.
Saunpur.
Goladanga.
Ramkrishnapur.
Khuat (with Kasondiya).
Chakarber.
Santragachhi.
Sathgharra.
Gudar Hât (with Kinkdar Chatterjea's Hât).
Battore.
- Shibpur (with Baji Shibpur, Majerhat, Bharpara, Bhattatala, Sriharinaupara, Bishop's College, and Company's Botanical Garden).
Padmapukhar.
South Baksara.
North Baksara.
- Salkiya (including) Bandaghat (with Haraganj and Banurjyapara).
Ghoosery (with Bhat Bagan).
Malipanchghara.
Barrackpur.
Bellur.
Naksha.
Chakpara.
Nallua.
Belgachhiya (with Paikan Belgachhiya).
Bahmangachahi.
Chaurasta (with Dharmtala Goghata, and Babudanga).
Golabari (with Filkhana).

* The part of the schedule headed "Suburbs of Calcutta," repealed by Act XVI. of 1874, s. 1, has been omitted.

ACT NO. XXII. OF 1857.*

Bombay University Act, 1857.

RECEIVED THE G.-G'S ASSENT ON THE 18TH JULY, 1857.

An Act to establish and incorporate an University at Bombay.

WHEREAS, for the better encouragement of Her Majesty's
Preamble. subjects of all classes and denominations
within the Presidency of Bombay and
other parts of India in the pursuit of a regular and liberal course of
education, it has been determined to establish an University at
Bombay for the purpose of ascertaining, by means of examination,
the persons who have acquired proficiency in different branches
of Literature, Science, and Art and of rewarding them by
academical degrees as evidence of their respective attainments
and marks of honour proportioned thereunto; and whereas, for
effectuating the purposes aforesaid, it is expedient that such
University should be incorporated; It is enacted as follows :—

Incorporation.

1. The following persons, namely,

The Right Honourable John, Lord Elphinstone, Governor of
Bombay;

The Honourable Sir William Yardley, Knight, Chief Justice of
the Supreme Court of Judicature at Bombay;

The Right Reverend John Harding, Doctor of Divinity, Bishop
of Bombay, *ex-officio*;

The Honourable Sir Henry Somerset, Lieutenant-General,
Knight Companion of the Most Honourable Order of the
Bath, Commander-in Chief of the Forces in Bombay, *ex-*
officio;

The Honourable James Grant Lumsden, Member of the Coun-
cil of Bombay, *ex-officio*;

The Honourable Arthur Malet, Member of the Council of
Bombay, *ex-officio*;

Edward Irvine Howard, Esquire, Director of Public Instruction
ex-officio;

Robert Haines, Esquire, M. D., Acting Educational Inspector,
Presidency Division, *ex-officio*;

C. Morehead, Esquire, M. D., Principal of the Grant Medical
College, *ex-officio*;

John Harkness, Esquire, LL.D., Principal of the Elphinstone
College, *ex-officio*;

* See also Acts XLVII of 1860 and I. of 1884.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

† Certain words, repealed by Act XII. of 1876, have here been omitted.

The Reverend James McDougall, Acting Principal of the Poona College, *ex-officio* ;

Philip William LeGeyt, Esquire, Member of the Legislative Council of India ;

The Honourable Sir Matthew Richard Sausse, Knight, Puisne Judge of the Supreme Court of Judicature at Bombay ;

Sir Jamsetjee Jeejeebhoy Knight ;

Metcalfe Larken, Esquire, Judge of the Sadar Court in Bombay, and President of the late Board of Education ;

Juggonauth Sunkersett, Esquire, Member of the late Board of Education ;

Bomanjee Hormusjee, Esquire, Member of the late Board of Education ;

Bhao Dajee, Esquire, Graduate of the Grant Medical College, Member of the late Board of Education ;

Matthew Stovell, Esquire, Surgeon in the Bombay Army, Secretary to the late Board of Education ;

Claudius James Erskine, Esquire, Civil Service, late Director of Public Instruction ;

William Edward Frere, Esquire, Member of the Royal Asiatic Society, and President of the Bombay Branch of the Royal Asiatic Society, Judge of the Sadr Court in Bombay ;

Major-General Charles Waddington, Companion of the Most Honourable Order of the Bath, Chief Engineer of Public Works ;

The Reverend John Wilson, Doctor of Divinity, Fellow of the Royal Society, Honorary President of the Bombay Branch of the Royal Asiatic Society ;

The Reverend Philip Anderson, Master of Arts, Chaplain on the Bombay Establishment ;

Henry Bartle Edward Frere, Esquire, Commissioner in Sindh ;

Lieutenant Edward Frederick Tierney Fergusson, Indian Navy ;

Mahomed Yusoof Moorgay, Kazi of Bombay ;

James John Berkley, Esquire, Fellow of the Geographical Society, M.I.C.E., President of the Bombay Mechanics' Institution, and Chief Resident Engineer of the Great Indian Peninsula Railway Company ;

Henry Lacon Anderson, Esquire, Secretary to Government ;

being the first Chancellor, Vice-Chancellor, and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor, or Fellows as herein-after mentioned, so long as they shall continue to be such Chancel-

lor, Vice-Chancellor, or Fellows are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Bombay; and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories* under the Government of† India ‡

2. The§ Body Corporate shall be able and capable in law to
 Power to hold and dis- take, purchase, and hold any property,
 pose of property. moveable or immoveable, which may become
 vested in it for the purposes of the§ University by virtue of any
 purchase, grant, testamentary disposition, or otherwise; and shall
 be able and capable in law to grant, demise, alien, or otherwise
 dispose of all or any of the property, moveable or immoveable,
 belonging to the§ University; and also to do all other matters
 incidental or appertaining to a Body Corporate.

3 § If any person being Chancellor, Vice-Chancellor or Fellow
 Office vacated by leaving of the said University, shall leave India
 India. without the intention of returning therto,
 his office shall thereupon become vacant.

Chancellor, 4. The Governor of Bombay for the
 time being shall be the Chancellor of the
 said University.||

5.|| The office of Vice-Chancellor shall be held for two years
 Vice-Chancellor. only. Whenever a vacancy shall occur in
 the office of Vice-Chancellor of the said
 University by death, resignation, departure from India, effluxion of
 time, or otherwise, the Governor of Bombay in Council shall, by
 notification in the *Bombay Gazette*, nominate a fit and proper person,
 being one of the Fellows of the said University, to be Vice-Chan-
 cellor in the room of the person occasioning such vacancy: Pro-
 vided that on any vacancy in the said office which shall occur by
 effluxion of time, the Governor of Bombay in Council shall have
 power to reappoint any future Vice-Chancellor to such office.

6. [*Fellows*].—*Repealed by Act VIII. of 1904.*

7. The Governor of Bombay in Council may cancel the ap-
 The appointment of a Fel- pointment of any person already appointed
 low may be cancelled. or hereafter to be appointed a Fellow of the
 University; and as soon as such order is notified in the Gazette,
 the person so appointed shall cease to be a Fellow.

* Here the words "in the possession and," being repealed by Act XII. of 1891,
 † Here the words "the East," } Sch. I., have been omitted.
 ‡ Here the word "Company," }
 § Here certain words repealed by Act VIII. of 1904 have been omitted.
 || Certain words, repealed by Act XII. of 1876, have been omitted.

8. The Chancellor, Vice-Chancellor, and Fellows for the time being, shall have the entire management of, and superintendence over, the affairs, concerns, and property of the said University; and in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor, and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University.*

9. [*Meetings of the Senate*].—*Repealed by Act VIII. of 1904.*

10. [*Appointment and removal of examiners and officers*].—*Repealed by Act VIII. of 1904.*

11. [*Power to confer degrees*].—*Repealed by Act VIII. of 1904.*

12. [*Qualification for admission of candidates for degrees*].—*Repealed by Act VIII. of 1904.*

13. [*Examination for degrees*].—*Repealed by Act VIII. of 1904.*

14. [*Grant of degrees*].—*Repealed by Act VIII. of 1904.*

15. The said Chancellor, Vice-Chancellor, and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Bombay in council, shall from time to time see fit to impose. Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor of Bombay in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Bombay in Council may direct.

Fees.

Annual accounts.

* Certain words after this repealed by Act VIII. of 1904 have been omitted.

ACT NO. XXV. OF 1857.*

Forfeiture Act, 1857.

RECEIVED THE G.-G.'s ASSENT ON THE 8TH AUGUST, 1857.

An Act† to provide for the adjudication and recovery of forfeitures of property in certain cases.

WHEREAS it is expedient‡ to provide for the adjudication and recovery of forfeitures in certain cases ;
Preamble. It is enacted as follows:—

1. [*Forfeiture of property on conviction of mutiny*].—*Repealed by Act V. of 1869, Part I. (c).*

2. If any person who shall have committed treason or any offence for which,“ by the Indian Penal Code, section 121 or section 122, or the Indian Articles of War, Article 24,”‡ his property declared to be forfeited, shall have been killed, or shall have died, or shall have escaped out of the territories of the East India Company, before he shall have been convicted of the offence, or cannot after diligent search be found, any Court or other authority which might have tried such offender, if he could have been

* Act XXV. of 1857, supplemented by the Forfeiture Act (IX. of 1859), has been declared to be in force in the whole of British India except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh ... See *Gazette of India* ... 1880, Pt. I., p. 672.

West Jalpaiguri and the Western Dvars ... Ditto ... 1881, Pt. I. p. 74.

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum ... Ditto ... 1881, Pt. I., p. 504.

The scheduled portion of the Mirzapur District ... Ditto ... 1879, Pt. I., p. 383.

Jaunsar Bawar ... Ditto ... 1879, Pt. I., p. 382.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ... Ditto ... 1886, Pt. I., p. 48.

The Scheduled Districts of the Central Provinces ... Ditto ... 1879, Pt. I., p. 771.

The District of Silhat ... Ditto ... 1879, Pt. I., p. 631.

The rest of Assam (except the North Lushai Hills) ... Ditto ... 1897, Pt. I., p. 299.

The Porahat Estate in the Singhbhum District ... Ditto ... 1897, Pt. I., p. 1059.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1866, Pt. I., p. 301.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ The words quoted have been substituted by Act XII. of 1891, Sch. II.

brought to trial, shall, upon the application of the Magistrate* or other officer authorized by Government to make such application, hold an enquiry, and on proof that the person charged with having committed the offence was guilty thereof, and that he is dead, or has escaped out of the territories of the East India Company, or cannot after diligent search be found, shall adjudge that all the property of such offender shall be forfeited to Government.

3. The forfeiture, whether upon conviction of such an offence

Forfeiture to extend to all property possessed by offender at the date of offence.

as aforesaid,† or upon an adjudication of forfeiture under this Act, shall extend to all property and effects of or to which the offender shall have been possessed or entitled,‡ either at the time of committing the offence, or at the time of the conviction or of the adjudication of forfeiture, or at any intermediate time; and no sale, alienation, or other disposition of such property, made subsequently to the commission of the offence, or made at any time with the fraudulent intention of preventing a forfeiture, shall have any effect against the right of Government to the forfeiture: Provided that nothing in this section contained shall affect

Proviso.

any transferee of any negotiable security, who shall prove that he acquired the same in good faith and with due caution for valuable consideration.

Note.—For effect of attachment against forfeited property.—*Vide* Marsh 259.

4. All immoveable property of the offender, which shall be

Forfeiture of land voluntarily alienated before committing offence.

alienated after the passing of this Act, and before the commission of any offence specified in section 2, shall be forfeited in the same manner as if no such alienation had been made, unless the alienation be made in good faith and for valuable consideration, or unless the same shall have been made and registered more than three months before the commission of the offence.§

5. The Court, or other authority by which the offender shall

Court may specify in conviction date of offence

be convicted or the forfeiture shall be adjudged, may specify in the conviction or adjudication the day on which the offence was committed, if it can be ascertained.

6. In any proceeding concerning property alleged to have

Matters proved by conviction or adjudication.

been forfeited, the conviction shall be conclusive evidence that the offence was committed and (if the day be specified in such conviction) that the

* See s. 11, *infra*.

† *Ganeshlal v. Amir Khan*, 8 B L. R. 83.

‡ *Marshall*, 259, 308.

§ This is "to prevent a disposition of his lands by gift, &c., on the part of a person contemplating the commission of any of the specified offences."—*Report of Select Committee*.

offence was committed on that day; if the day be not specified, the conviction shall be *prima-facie* evidence that the offence was committed on the day mentioned in the charge. In any such proceeding, an adjudication of forfeiture under this Act shall be *prima-facie* evidence of the commission of the offence and (if the day be specified in the adjudication) that the offence was committed on that day; if the day be not specified, the adjudication shall be *prima-facie* evidence that the offence was committed on the day mentioned in the charge.* Any adjudication under this Act shall be filed with and may be proved in the same manner as the records of the principal Court of criminal jurisdiction of the district.

7. After the conviction or adjudication, the Collector or other

Procedure for recovery of chief officer appointed by Government for forfeited property. the collection of revenue, or any other officer whom the Government may specially appoint, may seize and take possession of the forfeited property; if he require the assistance of a Court to enable him to obtain possession of any such property by reason of any dispute respecting the title to the same or for any other cause, the principal Civil Court of original jurisdiction of the district in which the property is situate may, upon the production of a certified copy of the conviction or adjudication, hear and determine in a summary manner upon petition any matter in dispute relating to such property. Any order which may be passed by the Court shall not be subject to appeal; but the party against whom the same may be given, by any Court other than one of Her Majesty's Supreme Courts of Judicature, shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Note.—*Vide* 3 Agra 281, 14 W. R. 114.

8. In case any person whose property shall have been so

Forfeited property or the proceeds to be restored upon proof that escape was not for the purpose of evading justice. adjudged to be forfeited shall, within one year after the seizure of any part of his property as a forfeiture, surrender himself, and shall, upon trial before a competent Court, be acquitted of the offence, his property, or the proceeds thereof, shall be restored upon proof, to the satisfaction of the Court, that he did not escape or keep out of the way for the purpose of evading justice.

Note.—A. W. R. 1897, 129.

* "When an offender appears to take his trial, and is convicted, the conviction should be conclusive evidence of his guilt, and also of the time when the offence was committed (if the conviction states the time). But when the guilt of the offender and the forfeiture of his property are adjudged in his absence, or after his death, the adjudication should, we think, be no more than *prima-facie* proof".—*Report of Select Committee*.

9. [*Limitation of suits and proceedings*].—*Repealed by Act IX. of 1871.**

10. In case it shall appear to a Magistrate that there is reasonable ground to suppose that any person is guilty of any offence specified in section 2 of this Act, and that any property liable to forfeiture for the offence is likely to be made away with, it shall be lawful for the Magistrate to attach such property and secure the same until the trial of the offender or until an enquiry for the purpose of adjudication under this Act shall be had †

11. The word "Magistrate" in this Act shall include any officer competent to commit for trial for any offence specified in section 2 of this Act.

Interpretation-clause.

ACT NO. XXVII. OF 1857.†

The Madras University Act, 1857.

RECEIVED THE G.-G.'S ASSENT ON THE 5TH SEPTEMBER, 1857.

An Act to establish and incorporate an University at Madras.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort St. George and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Madras for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by academical degrees as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated; It is enacted as follows:§—

Incorporation.

1. The following persons, namely,

The Right Honourable George Francis Robert, Lord Harris,
Governor of Fort St. George;

The Honourable Sir Christopher Rawlinson, Knight, Chief
Justice of the Supreme Court of Judicature at Madras;

* But see 13 B. L. R. 445.

† The object of this section is "to prevent the making away with property liable to forfeiture during the interval before trial or adjudication."—*Report of Select Committee.*

This title has been given by the Indian Short Titles Act (XIV. of 1897).

‡ See also Acts XLVII. of 1860 and I. of 1884.

§ Certain formal words, repealed by Act XII. of 1876, have been omitted.

The Right Reverend Thomas Dealtry, Doctor of Divinity,
Bishop of Madras, *ex-officio* ;

The Honourable Sir Patrick Grant, Lieutenant-General, Knight
Commander of the Most Honourable Order of the Bath ;
Commander-in-Chief of the Forces in Madras, *ex-officio* ;

The Honourable Walter Elliot, Member of the Council of
Madras, *ex-officio* ;

The Honourable Sir Henry Conyngham Montgomery, Baronet,
Member of the Council of Madras, *ex-officio* ;

Alexander John Arbuthnot, Esquire, Director of Public Instruc-
tion, *ex-officio* ;

Eyre Burton Powell, Esquire, Principal of the Presidency
College, *ex-officio* ;

Henry Fortey, Esquire, Acting Principal of the Presidency
College, *ex-officio* ;

James Kellie, Esquire, President of the Medical College Coun-
cil, *ex-officio* ;

The Honourable Sir Henry Davison, Knight, Puisne Judge of
the Supreme Court of Judicature at Madras ;

Thomas Pycroft, Esquire, Chief Secretary to Government ;

Edward Maltby, Esquire, Acting Chief Secretary to Govern-
ment ;

James Dewar Bourdillon, Esquire, Secretary to Government ;

Henry Forbes, Esquire, Acting Secretary to Government ;

Colonel Charles Alfred Browne, Secretary to Government ;

James Blair Preston, Esquire, Physician-General ;

The Reverend Robert Halley, Master of Arts, Principal of the
Doveton College ;

J. Townshend Fowler, Esquire, Principal of the Government
Normal School ;

P. Soobroyooloo Naidoo, President of Patcheappah's Institu-
tion ;

William Ambrose Morehead, Esquire, Provisional Member of
the Council of Madras ;

Guy Lushington Prendergast, Esquire, Accountant-General ;

Colonel Arthur Thomas Cotton, Commandant of Engineers ;

Colonel Charles Edward Faber, Chief Engineer in the Depart-
ment of Public Works ;

Lieutenant-Colonel Thomas Townsend Pears, Companion of
the Most Honourable Order of the Bath, Consulting Engineer
for Railways ;

Lieutenant-Colonel George Balfour, Companion of the Most Honourable Order of the Bath ;

The Reverend John Richards, Master of Arts ;

Lieutenant-Colonel Frederick Conyers Cotton, Acting Mint Master ;

Chittur Runganadum Sastry, Head Interpreter in the Supreme Court of Judicature ;

John Emelius Mayer, Esquire, Professor of Chemistry and Pharmacy in the Madras Medical College ;

The Reverend Robert Kerr Hamilton, Master of Arts ;

The Reverend George Hall, Master of Arts ;

The Reverend Peter Sorenson Royston, Bachelor of Arts ;

James Sanderson, Esquire, Surgeon in the Madras Army ;

The Reverend John Braidwood, Master of Arts ;

John Dawson Mayne, Bachelor of Arts, Professor of Law, Moral and Mental Philosophy, and Logic, in the Presidency College ;

Richard Burgass, Esquire, Master of Arts, First Judge of the Court of Small Causes ;

Lieutenant-Colonel John Joseph Losh, Military Auditor-General ;

William Judson Vansomeran, Esquire, Doctor in Medicine, Professor of Anatomy and Physiology in the Madras Medical College ;

Samuel Jesudasen, Native Surgeon ;

Major John Maitland, Superintendent, Gun-carriage Manufactory ;

The Reverend A. Burgess ;

The Reverend W. Grant,

being the first Chancellor, Vice-Chancellor, and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor, or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor, or Fellows are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Madras.; and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories* under the Government of† India.‡

* Here the words ' in the possession and,'

† Here the words " the East "

‡ Here the word " Company,"

} have been omitted, being repealed by ' Act XII. of 1891, Sch. I.

2. The* Body Corporate shall be able and capable in law to take, purchase, and hold any property, moveable or immoveable, which may become vested in it for the purposes of the* University by virtue of any purchase, grant, testamentary disposition, or otherwise; and shall be able and capable in law to grant, demise, alien, or otherwise dispose of, all or any of the property, moveable or immoveable, belonging to the* University; and also to do all other matters incidental or appertaining to a Body Corporate.

3.* If any person, being Chancellor, Vice-Chancellor, or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

Chancellor.

4. The Governor of Fort St. George for the time being shall be the Chancellor of the said University.†

5. The office of Vice-Chancellor shall be held for two years only. Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time, or otherwise, the Governor of Fort St. George in Council shall, by notification in the *Fort St. George Gazette*, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy: Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor of Fort St. George in Council shall have power to reappoint any future Vice-Chancellor to such office.‡

6. [*Fellows*].—*Repealed by Act VIII. of 1904.*

7. The Governor of Fort St. George in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University, and as soon as such order is notified in the *Gazette*, the person so appointed shall cease to be a Fellow.

8. The Chancellor, Vice-Chancellor, and Fellows for the time being, shall have the entire management of, and superintendence over, the affairs, concerns, and property of the said University; and in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor, and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University.*

9. [*Meetings of the Senate*].—*Repealed by Act VIII. of 1904.*

* Certain words repealed by Act VIII. of 1904 have been omitted.

† Certain words repealed by Act XII. of 1876, have been omitted.

10. [*Appointment and removal of examiners and officers*].—*Repealed by Act VIII. of 1904.*

11. [*Power to confer degrees*].—*Repealed by Act VIII. of 1904.*

12. [*Qualification for admission of candidates for degrees*].—*Repealed by Act VIII. of 1904.*

13. [*Examination for degrees*].—*Repealed by Act VIII. of 1904.*

14. [*Grant of degrees*].—*Repealed by Act VIII. of 1904.*

15. The said Chancellor, Vice-Chancellor, and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Fort St. George in Council, shall, from time to time, see fit to impose.

Fees.

Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University under the directions and regulations of the Governor of Fort St. George in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Fort St. George in Council, may direct.

Annual accounts.

ACT NO. XXIX. OF 1857.

Land Customs, Bombay.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH SEPTEMBER, 1857.

An Act to make better provision for the collection of land-customs on certain foreign frontiers of the Presidency of Bombay.

WHEREAS it is expedient to make better provision for the collection and management of land-customs on certain foreign frontiers of the Presidency of Bombay; It is enacted as follows:—

Preamble.

1. [*Repeal of enactments*].—*Repealed by Act XIV. of 1870.*

2. [*Customs-duties*].—*Repealed by Act XIII. of 1871.*

3. [*Customs-duties*].—*Repealed by Act XI. of 1869.*

4. For the levy of duties of customs on goods exported by land to, or imported by land from, such foreign territories, customs-stations may be established at such places as may be determined by the Governor in Council,

Customs-stations.

5. The Governor in Council may appoint such persons as he may deem fit for the control and supervision of the collection and management of the customs payable under this Act as Commissioners and Deputy Commissioners of Customs or under such other designation as the said Governor in Council shall determine;

and may appoint all other proper persons to execute the duties of the several subordinate offices necessary to the due management and collection of the said customs:

Provido, Provided that no new office shall be created without the previous consent of the Governor-General of India in Council.

6. The Governor in Council may prescribe, by public notice in the official Gazette, by what roads and passes goods shall be allowed to pass into or out of any such foreign territory as is described in sections 2 and 3 of this Act;

and after such notice, goods, which may be brought to any station established on other roads or passes than those so prescribed, shall be detained, and shall be liable to confiscation, unless the person in charge thereof shall be able to satisfy the adjudicating officer that his carrying them by that road or pass was from ignorance or accident.

7. Goods unlawfully passed, or attempted to be passed unlawfully, across any frontier guarded by stations, between sunset and sunrise, shall be seized and confiscated.

8. When goods are brought to be passed at any station established for the levy of duties and passing of goods, a written application, according to a form to be prescribed by the Commissioner of Customs, shall be made by the owner or person in charge, for permission to pass such goods; and such application shall contain a true description of the goods, with the marks, numbers, and description of the packages containing the same, and a declaration of their value.

If any goods shall be passed or attempted to be passed without such an application in writing as is above described, they shall be liable to be seized and confiscated.

9. Goods brought to be passed at any such station shall be liable to confiscation if the packages in which the same may be contained shall on examination be found not to correspond with the description of them given in the application, or if the contents thereof be found not to have been correctly described in regard to sort, quality, or quantity, or if, in or among the packages, any goods not stated in the application be found concealed or mixed up with the specified goods.

10. The Governor in Council from time to time, by notice in Government to fix value the official Gazette, may fix a value for any of goods for levying duty. article or number of articles liable to duty under this Act upon their value; and the value so fixed for such articles shall, till altered by a similar notice, be taken to be the value of such articles for the purpose of levying duty on the same under this Act.

11. When goods liable to duty, for which a value has not been Duty leviable on certain fixed by such a notice as is above directed, of goods according to market- or for which a fixed duty has not been declared, value. are brought to any such station as aforesaid, the duty leviable on such goods shall be levied according to the market-value of such goods.

12. If the value of any goods, upon which duty is leviable Ascertainment of market- according to the market-value thereof, shall value for levy of duty. appear to be under-stated in the declaration of value prescribed in section 8, the officer authorized to receive duties of customs at the station where such goods are brought to be passed shall have power to take the goods, or any part thereof, as purchased for the Government at the price so declared; and whenever he shall so take goods for the Government, payment thereof shall be made for the same within one month from the date of the declaration, and the officer shall sell the goods so taken on account of Government;

and, if they shall realize on sale a sum exceeding all charges incurred on them by Government, a proportion not more than one-half of the excess shall, at the discretion of the Commissioner, be payable to the officer who reported the under-valuation of the goods, who shall, in like manner, be liable to pay one-half of the nett loss that may accrue on the sale of the said goods.

13. No goods liable to duty shall be exempted from the payment of such duty, or of any part thereof, Exemptions. except under special order from the "Commissioner of Customs:"*

Provided always that any officer authorized to receive duties of customs under this Act may, at his discretion, pass, free of duty, any passenger's personal baggage in actual use; and if any person shall apply to have goods passed as such baggage, such officer, acting under the orders of "the Commissioners of customs"* shall determine whether they be passenger's personal baggage in actual use or goods subject to duty under the provisions of this Act.

14. When goods are passed at any such station as aforesaid, Certificates of payment the officer authorized to receive duties of customs at such station shall grant a certificate of duty.

* The words within quotations have been substituted by Bom. Act III. of 1915.

of the payment of such duty, or (if the case so require) of the goods having been passed free of duty.

Any officer of customs employed at a station established under this Act may require any person in charge of dutiable goods which have been passed across the frontier to produce the certificate granted for such goods; and any goods which are unaccompanied by a certificate, or which, on examination, do not correspond with the specification contained in the certificate produced, shall be detained, and shall be liable to confiscation.

15. If a certificate be lost by any person to whom it may have been issued by the officer authorized to issue the same, the Commissioner of Customs or other officer duly authorized in that behalf, on being satisfied that no fraud has been committed or was intended, may grant a duplicate of such lost document upon payment of a fee of not less than one rupee nor exceeding ten rupees.

The Commissioner or other officer as aforesaid may also authorize any amendment to be made in any application made under this Act, but, if such amendment be required after such application is entered and recorded in the custom-house books, then upon payment of a like fee for any amendment in a document so entered.

16. Any station-officer who shall permit goods liable to duty to pass across the frontier without payment of duty, or who shall release any goods not covered by a sufficient certificate, or who shall permit such goods to pass by any road or pass other than the prescribed roads or passes, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding five hundred rupees, or both.

17. Any station-officer who shall needlessly and vexatiously injure goods under the pretence of examination or in the course of his examination, or who shall wrongfully detain goods for which there is produced a sufficient certificate, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding five hundred rupees, or both.

18. Whoever intentionally obstructs any officer in the exercise of any powers given by this Act to such officer shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or both.

19. Whoever offers a bribe to any officer appointed under this Act, in order to induce such officer to act in a manner inconsistent with his duty,

shall be liable, for every such offence, on conviction before a Magistrate, to a fine not exceeding one thousand rupees, or to imprisonment for any term not exceeding six months, or both.

20. In all cases in which, under this Act, goods are liable to Adjudication of confiscations, &c. confiscation, a Commissioner or Deputy Commissioner of Customs appointed under this Act may adjudicate such confiscation, or the same may be adjudged by an Assistant Commissioner of Customs appointed under this Act being a Justice of the Peace:

Provided that the power to adjudicate confiscation shall not extend, as regards an Assistant Commissioner, to goods beyond the value of "five*" hundred rupees; and all cases adjudicated by an Assistant Commissioner shall be liable to revision by a Commissioner or Deputy Commissioner of Customs on appeal.

21. In case any goods shall be seized as liable to confiscation, Restoration of forfeited goods. or detained as under-valued, under this Act, the adjudicating officer may order the same to be restored in such manner and on such terms and conditions as he thinks fit to direct; and if the owner of the same accept such terms and conditions, he shall not have or maintain any action for recompense or damage on account of such seizure or detention, and the adjudicating officer shall not proceed to condemnation.

22. Any officer authorized to adjudicate customs-cases, if he Damages for vexatious seizure. shall decide that a seizure of goods made under the authority of this Act was vexatious and unnecessary, may adjudge damages to be paid to the owner by the officer who made such seizure, beside ordering the immediate release of the goods; and if the owner accepts such damages, no action shall hereafter lie against such officer in any Court of Justice on account of such seizure;

and if such adjudicating officer shall decide that the seizure Penalty in mitigation of confiscation. was warranted, but shall deem that the penalty of confiscation is unduly severe, he may mitigate the same by levying on the goods so seized as afore-said any portion of the market-value of such goods not less than one-tenth of such value;

and if the said officer adjudges confiscation, or any penalty in Rewards to customs officers. mitigation of confiscation, he may order that, from the sale of the goods, or from the proceeds of any penalty inflicted in mitigation of confiscation, a proportion not exceeding, in all cases of seizure, except seizures of salt or tobacco, one-half of the sum remaining after payment of all Government demands, shall be distributed in rewards

* The word within quotations has been substituted by Bom. Act III. of 1913.

amongst such officers as he deems entitled thereto, and in such proportion as he directs to each respectively.

In awarding rewards for the seizure of confiscated salt or tobacco, the said officer may award one-half of the proceeds of sale, without making any deduction on account of Government demands.

ACT I. OF 1858.

The Madras Compulsory Labour Act, 1858.*

RECEIVED THE G.-G.'S ASSENT ON THE 20TH JANUARY, 1858.

An Act to make lawful compulsory labour for the prevention of mischief by inundation, and to provide for the enforcement of customary labour on certain works of irrigation in the Presidency of Fort Saint George.†

WHEREAS the safety of person and property is endangered by inundations caused by sudden breaches of the embankments of tanks, rivers, and canals, and of anicuts and other like works; and it is necessary for the common good to make it obligatory on persons of the labouring classes, when duly called upon, to unite their labour to prevent such breaches, or to repair them instantly; and whereas it is expedient to make legal provision for the enforcement of the duty, which by local custom is incumbent on village communities, to furnish the labour required for the execution of certain works for the purpose of irrigation and drainage; It is enacted a follows:—

1. Whenever it shall appear to the officer in charge of any tank, river, or canal, or of any anicut or other like work, that there is imminent danger of the embankment of such tank, river, or canal being breached, or of a breach being made in such anicut or other work, and of a destructive inundation being caused thereby, which may be prevented by a large body of labourers immediately working together to strengthen the embankment or other work; or when such a breach has occurred, if it shall appear to such officer that it can be repaired, and the inundation caused by it be stopped, by the immediate employment of a large body of labourers for that purpose, it shall be lawful for such officer to require the head or heads of the village or villages in the vicinity to call upon all able-bodied male persons of the labouring classes

Labourers may in certain cases, be called upon to assist in preventing or repairing breaches in embankments and anicuts.

* This short title has been added by Act I. of 1901.

† Act I. of 1858 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

in such village or villages to co-operate in the work necessary for preventing or repairing the breach as the case may be.

In the absence of the said officer, it shall be lawful for the tahsildar of the taluq to make such requisition in his stead.

And if neither the said officer nor the tahsildar is on the spot, and the emergency is great and urgent, it shall be lawful for the head of the village in which the breach is expected to occur or has occurred, of his own motion to call upon the labourers as aforesaid of his own village, and, if needful, to make a requisition to the heads of the neighbouring villages to call likewise upon the labourers of their villages to co-operate in the work necessary for preventing or repairing the breach.

Note.—*Vide 4 M. H. C. R. 21,*

2. Any male person of the labouring classes, being duly called upon by the head of his village to labour as aforesaid, who shall refuse or neglect to comply with such call without any lawful excuse, shall, on conviction before a Magistrate or an officer exercising the ordinary powers of a Magistrate, be punished with a fine which may extend to one hundred rupees, or with simple imprisonment which may extend to one month, or with both.

3. Every person who shall be employed on such work under such requisition shall be paid for his labour by day at the highest rate paid in the neighbourhood for similar work, and, if he is required to work at night, at double such rate.

4. Payment shall be made to the labourers from the public treasury; and if the labourers shall have been employed upon a work belonging to a private person, the amount advanced from the treasury shall be recoverable from such person by the same means which may be lawfully used for the recovery of arrears of land-revenue.

5. It shall be lawful for heads of villages, on the requisition of the officer in charge of such works as aforesaid, or, in his absence, on the requisition of the tahsildar, or, in case of emergency, when neither such officer nor the tahsildar is on the spot, of their own motion, to make requisitions upon the inhabitants of their villages for the supply of materials, to wit, trees and leaves, bamboos, straw, and the like, necessary for stopping breaches in the embankments of tanks, rivers, and canals, and to seize and, if necessary, to cut down such articles wherever they may be found, giving receipts for them in writing;

such supplies shall be paid for from the public treasury at the highest prices for which such articles are sold in the neighbourhood;

and in case damage is sustained by any person in consequence of the cutting down of any such articles, compensation shall be made for such damage, the amount of which compensation shall, in case of dispute, be determined in the same manner as amounts payable under section 6.

When the work for which such articles are used belongs to a private person, the amount advanced from the treasury shall be recoverable from him by the same means by which arrears of land-revenue are recoverable.

6. Whenever by local custom any work for the purpose of irrigation or drainage, or connected therewith, is usually executed by the joint labour of a village community, any person bound by such custom to contribute labour to such work, who neglects or refuses without reasonable cause to comply with a requisition for such customary aid made to him by the head of the village under the orders of the tahsildar or other superior revenue-officer, shall be liable to pay a sum equal to twice the value of the labour which he is bound to contribute.

The amount so payable shall, in case of dispute, be determined summarily by a village* panchayat assembled by order of the Collector through the village* munsif according to the rules for assembling such panchayats prescribed in Regulations V. and VII. of 1816.†

Such amount shall be payable on demand; and, on non-payment, the same may be recovered by the same means by which arrears of land-revenue are recoverable.

All sums paid or recovered under this section shall be applicable to the expenses of any works for the purpose of irrigation or drainage executed for the benefit of the village communities to which the defaulters respectively belong.

* Certain words repealed by Act XVI. of 1874, have been omitted.

† So much of this section as relates to Madras Regulation VII. of 1816 was repealed by Act XVI. of 1874.

ACT NO. III. OF 1858.*

The State Prisoners Act, 1858.

RECEIVED THE G.-G.'S ASSENT ON THE 23RD JANUARY, 1858.

An Act to amend the law relating to the arrest and detention of State Prisoners.

WHEREAS doubts have been entertained whether State prisoners confined under Regulation II., 1819, of the Madras Code, or Regulation XXV., 1827, of the Bombay Code, can be lawfully detained in any fortress, jail, or other place within the local limits of the jurisdiction of the Supreme Courts of Judicature at Madras and Bombay respectively; and it is expedient that such doubts be removed, and that the

* Act III. of 1858 has been declared to apply to the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared in force—

in Upper Burma except the Shan States by Act (XIII. of 1898);

in Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899) s. 3;

in Angul and the Khondmals by Reg. (I. of 1894), s. 3;

in the Chittagong Hill-tracts by Reg. (I. of 1900), s. 4;

in the Arakan Hill Districts (ss. 2 and 5) by Reg. (IX. of 1874), s. 3; and

in British Baluchistan (s. 5) by Reg. (I. of 1890), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
Aden	...	...	Ditto	...	1879, Pt. I., p. 434
West Jalpaiguri and the Western Dvrs	...	...	Ditto	...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum...	...	...	Ditto	...	1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	...	...	Ditto	...	1879, Pt. I., p. 383.
Jaunsar Bawar	...	...	Ditto	...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	...	Ditto	...	1886, Pt. I., p. 48.
The District of Lahaul	...	...	Ditto	...	1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	...	...	Ditto	...	1879, Pt. I., p. 771.
The District of Silhat	...	...	Ditto	...	1879, Pt. I., p. 631.
The Districts of Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur, Garo Hills, Khasi and Jaintia Hills, Cachar and Goalpara	...	...	Ditto	...	1887, Pt. I., p. 78.
The Mokokchang Sub-Division of the Naga Hills District	...	...	Ditto	...	1891, Pt. I., p. 252.
It has been extended, under the same Act, to the following Scheduled Districts:—					
Kumaon and Garhwal	...	...	See <i>Gazette of India</i>	...	1876, Pt. I., p. 605.
The North-Western Provinces Tarai	...	...	Ditto	...	1876, Pt. I., p. 505.
It has been extended to the Shan States by the Shan States Laws and Criminal Justice Order, 1895, Sch. II. See <i>Burma Gazette</i> , 1895, Pt. I., p. 262.					

powers of the said Regulations and of Regulation III., 1818, of the Bengal Code, be extended; It is enacted as follows:—

1. [*Repeal of part of s. 1, cl. (1) of Bombay Regulation (XXV. of 1827)*].—*Repealed by Act XIV. of 1870.*

2. The provisions of Regulation III., 1818, of the Bengal Code, Regulation II., 1819, of the Madras Code, and Regulation XXV., 1827, of the Bombay Code, as altered by section 1 of this Act, relating to the arrest and confinement of persons as State prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Courts of Judicature at Calcutta, Madras, and Bombay respectively.

Note.—*Vide* 6 B. L. R. 392.

3. All powers for the better custody of State prisoners, which, by virtue of Act XXXIV. of 1850, are vested in the Governor-General in Council, shall be possessed and may be exercised by the Governor in Council of Fort St. George and the Governor in Council of Bombay respectively for the better custody of State prisoners arrested within their respective presidencies.

4. [*Arrest, &c., made before the passing of this Act legalized*].—*Repealed by Act XII. of 1891, Sch. I.*

5. The Governor-General in Council may order the removal of any State prisoner, confined under the provisions of any of the said Regulations as amended and extended by this Act, from any fortress, jail, or place in which he may be confined within either of the said presidencies, to any other fortress, jail, or place of confinement within the territories* under the Government of India.†

See *Re Amir Khan*, 6 B. L. R. 450.

* Here the words "in the possession and,"

† Here the words "the East,"

‡ Here the word "Company,"

} have been omitted, having been repealed by Act XII. of 1891, Sch. I.

ACT NO. XXXI. OF 1858.*

The Bengal Alluvion Land Settlement Act, 1858.†

RECEIVED THE G.-G.'S ASSENT ON THE 24TH AUGUST, 1858.

An Act to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.

WHEREAS, for the removal of doubts respecting the course proper to be followed in the settlement of land added by alluvial accession to estates paying revenue to Government, it is expedient to lay down certain rules to be observed in the settlement of such land; It is enacted as follows:—

1. When land added by alluvial accession to an estate paying revenue to Government becomes liable to assessment if it be so agreed on between the Revenue authorities and the proprietor or proprietors, the revenue assessed upon the alluvial land may be added to the jama of the original estate; and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent-roll for the former jama of the original estate

If the proprietor or proprietors object to such an arrangement, or if the Revenue authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jama, and shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate, whether the separate settlement be made with the proprietor or proprietors, or the land be let in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement.

The separate settlement may be permanent, if the settlement of the original estate is permanent.

2. Nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land under the provisions of clause 1, section 4, Regulation XI., 1825.

* Act XXXI. of 1858 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874) s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, s. 3, in the Santhal Parganas, and, under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum, and the Kolhan. The Act has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends.—See Reg. I. of 1886, s. 2.

† This short title has been added by Act I. of 1903

It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to ascertain and record all such rights according to the rules prescribed in Regulation VII., 1822; and to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

3. [*Separate settlements heretofore made—Saving of rights*].—*Repealed by Act I. of 1903.*

ACT NO. V. OF 1859.*

The Bengal Ghatwali Lands, Act†,

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MARCH, 1859.

An Act to empower the holders of ghatwali-lands in the district of Birbhum to grant leases extending beyond the period of their own possession.

WHEREAS it has been held that the ghatwals of the district of Birbhum who pay the revenue of their lands directly to Government under the provisions of Regulation XXIX., 1814, of the Bengal Code, have not the power of alienating their lands; and whereas, for the development of the mineral resources of the country in which the said ghatwali-lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession should, in certain cases, be extended to the possessors of such lands; It is enacted as follows:—

1. Ghatwals holding lands in the district of Birbhum under the Right of ghatwals of Birbhum to grant leases. provisions of the aforesaid Regulation shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures, as is allowed by law to the proprietors of other lands:

Provided that no lease of ghatwali-lands for any period extending beyond the lifetime or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be

* Act V. of 1859 has been declared to be in force in the Santhal Parganas by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899 s. 3.

† This short title has been substituted by Act I. of 1903,

granted for the working of mines, or for the clearing of jungle, or for the erection of dwelling-houses or manufactories, or for tanks, canals, and similar works; and shall be approved by the Commissioner of the division, such approval being certified by an endorsement on the lease under the signature of the Commissioner.

2. If any of the said ghatwali-lands be at any time under the Court of Wards and Revenue-authorities have like power in certain cases. superintendence of the Court of Wards, or otherwise subject to the direct control of the officers of Government, it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

ACT NO. IX. OF 1859.*

The Forfeiture Act, 1859.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH APRIL 1859.

An Act to provide for the adjudication of claims to property seized as forfeited.

WHEREAS it is expedient† to remove doubts concerning the powers of officers or other persons to whom commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of forfeiture made by such officers or other persons; It is enacted as follows:—

1 to 15. [*Repealed by Act VIII. of 1868.*]

* The object of the unrepealed parts of this Act is stated to be "to give validity to certain forfeitures or seizures of property which have been or are liable to be called in question on the ground of some irregularity of procedure, or defect or informality in recording the conviction of the parties whose property has been forfeited or seized, or of the absence of a formal adjudication of forfeiture as required by Act XXV. of 1857."—*Statement of Objects and Reasons, para. 1.*

This title has been given by the Indian Short Titles Act (XIV. of 1897).

Ss. 16, 17, 18, and 20 of this Act have been declared to be in force—

in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3;

in British Baluchistan (except the last para. of s. 18) by Reg. (I. of 1890), s. 3;

in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4.

The same sections have been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh ...	...	See <i>Gazette of India</i> ...	1886, Pt. I., p. 672.
West Jalpaiguri ...	...	Ditto ...	1881, Pt. I., p. 74.
The District of Hazaribagh ...	...	Ditto ...	1881, Pt. I., p. 507.
The District of Lohardaga ...	...	Ditto ...	1881, Pt. I., p. 508.
The District of Manbhum ...	...	Ditto ...	1881, Pt. I., p. 509.
Fargana Dhalbhum in the District of Singhbhum ...	...	Ditto ...	1881, Pt. I., p. 510.
The Scheduled portion of Mirzapur District ...	...	Ditto ...	1879, Pt. I., p. 383.
Jaunsar Bawar ...	...	Ditto ...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...	...	Ditto ...	1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces ...	...	Ditto ...	1879, Pt. I., p. 771.
The District of Silhat ...	...	Ditto ...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills) ...	...	Ditto ...	1897, Pt. I., p. 299.
It has been extended, under the same Act, to the following Scheduled Districts:—			
Kumaon and Garhwal ...	...	See <i>Gazette of India</i> ...	1876, Pt. I., p. 606.
The North-Western Provinces			
Tarai ...	...	Ditto ...	1876, Pt. I., p. 505.

It has been declared, under the same Act, not to be in force in the District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

† Certain words, repealed by Act XII. of 1891, Sch. I., have here been omitted.

16. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the conviction.

Convictions involving forfeiture not questionable in suit relating to forfeited property.

17. Whenever any person shall have been convicted as above by an officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

Conviction not questionable because capacity of convicting officer not shown.

18. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property, have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice.

Attachment without adjudication of forfeiture not questionable unless offender be acquitted within one year, &c.

Nothing in this section shall extend to persons entitled to pardon upon Her Majesty's proclamation, published in the *Calcutta Gazette Extraordinary*, dated the 1st of November 1858, or to any person who, having surrendered himself within the period of one year after the seizure of his property, shall be discharged by order of Government without a prosecution.

Exemption of pardoned person.

19. [*Release of property attached as forfeited*].—*Repealed by Act VIII. of 1868.*

20. Nothing in this Act shall be held to affect the right of parties not charged with any offence for which, upon conviction, the property of the offender is forfeited, in respect of any property attached or seized as forfeited or liable to be forfeited to Government; provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the

Rights of parties not charged with offence involving forfeiture.
Proviso.

date of the attachment or seizure of the property to which the suit relates.*

ACT NO. X. OF 1859.†

The Bengal Rent Act, 1859.‡

RECEIVED THE G.-G.'S ASSENT ON THE 29TH APRIL, 1859.

An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.

WHEREAS it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of raiyats with respect to the delivery of pattas and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

1. [*Laws repealed and modified*].—*Repealed by Act XIV. of 1870, s. 1.*

Note.—6 W. R. (Act X.) 102; 1 N. W. P. 236.

2. Every raiyat is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a patta containing the following particulars:—

the quantity of land and, where fields have been numbered in a Government survey, the number of each field;

the amount of annual rent;

the instalments in which the same is to be paid;

and any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

* Ss. 16, 17, 18, and 20 of this Act have been declared to apply to the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874).

† This Act has been repealed in Bihar and Orissa by B. and O. Act II. of 1913. It has been repealed by Ben. Act VIII. of 1869, s. 107, as to Districts in Bengal to which that Act is extended. It has also been repealed in Bengal (except Calcutta, Orissa, and the Scheduled Districts), by Act VIII. of 1885, s. 2.

‡ This short title has been added by Act I. of 1903.

3. Raiyats who, in the Provinces of Bengal, Bihar, Orissa* Raiyats holding land at fixed rates to receive pattas. hold lands at fixed rates of rent, which have not been changed from the time of the permanent settlement, are entitled to receive pattas at those rates.

4. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a raiyat in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Raiyats having right of occupancy, but not holding at fixed rates, to receive pattas.

5. Raiyats having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive pattas at fair and equitable rates.

In case of dispute, the rate previously paid by the raiyat shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

6. Every raiyat who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under patta or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, nijjot, or sir-land belonging to the proprietor of the estate or tenure, and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sublet for a term or year by year by a raiyat having a right of occupancy.

The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section.

7. Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a raiyat when it contains any express stipulation contrary thereto.

8. Raiyats not having rights of occupancy are entitled to pattas only at such rates as may be agreed on between them and the persons to whom the rent is payable.

* * Here certain words have been repealed by Act I. of 1903.

9. Every person who grants a patta is entitled to receive from the person to whom the patta is granted a kabuliyat or counterpart-engagement in conformity with the terms of the patta.

Person granting patta entitled to counterpart engagement.

The tender to any raiyat of a patta such as the raiyat is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a kabuliyat from such raiyat.

10. Every under-tenant or raiyat from whom any sum is exacted in excess of the rent specified in his patta, or payable under the provisions of this Act, whether as abwab or under any other pretext, and every under-tenant, raiyat, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid.

Exactions in excess of rent, or receipt withheld.

Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Form of receipt.

11. The power heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them other than are authorized by the provisions of this Act.

Landholder not to compel attendance of tenant for adjustment of rent, &c.

Payment of rent how enforced.

12 If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or raiyat by illegal confinement or other duress, such under-tenant or raiyat shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion.

Damages for extorting payment of rent by duress.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

13.* No under-tenant or raiyat who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become can-

Enhancement of rent of raiyat holding without, or after expiry, &c., of written engagement.

* The provisions of ss. 13 and 14 are not to affect settlement proceedings under Ben. Reg. VII. of 1822 or other law for the time being in force for the regulation of settlements.—See Ben. Act VIII. of 1879, s. 4.

called in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or raiyat, in or before the month of Chait, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed.

Such notice shall be served by order of the Collector on the application* of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or raiyat.

If for any reason the notice cannot be served personally upon the under-tenant or raiyat, it shall be affixed at his usual place of residence, or, if he have no such place of residence in the district in which the land is situate, the mode of service of such notice shall be by affixing it at the mal-kachahri of such land or other conspicuous place thereon, or at the village chauri or chaupal, or at some other conspicuous place in the village in which the land is situate.

14.† Any under-tenant or raiyat on whom such notice as aforesaid has been served may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

15. No dependent taluqdar or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the raiyats, who in the Provinces of Bengal, Bihar, Orissa,‡ holds his taluq or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII., 1793, or in any other law to the contrary notwithstanding.

16. Whenever, in any suit under this Act, it shall be proved that the rent at which a taluq or other tenure is held in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such taluq or tenure has been held at that rent from the time of the permanent settlement, unless

* Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

† See foot-note p. 256.

‡ Here certain words have been repealed by Act I. of 1903.

the contrary be shewn, or it be proved that such rent was fixed at some later period,

Rent of raiyat having right of occupancy not to be enhanced unless—

some one of the following grounds, namely:—

that the rate of rent paid by such raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent :
 rate paid by him is below that prevailing in adjacent places :

that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat :
 value of land, &c., has increased independently of raiyat :

that the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.
 quantity of land held by raiyat is greater than he has paid rent for

18. Every raiyat having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the raiyat, or if the quantity of land held by the raiyat has been proved by measurement to be less than the quantity for which rent has been previously paid by him.
 When raiyat may claim abatement of rent.

19. Any raiyat who desires to relinquish the land held or cultivated by him shall be at liberty to do so provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent in or before the month of Chait of the year preceding that in which the relinquishment is to have effect.
 Relinquishment of land by raiyat after notice

If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land.

If the person entitled to the rent of the land or his agent refuse to receive any such notice and to sign a receipt for the same, the raiyat may make an application† to the Collector, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in the section 13.

* The provisions of s. 17 are not to affect settlement-proceedings under Ben Reg. VII. of 1822 or other law for the time being in force for the regulation of settlements — See Ben. Act VIII. of 1879, s. 4.

† Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

20. Any instalment of rent which is not paid on or before the day when the same is payable according to the patta or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and, unless otherwise provided by written agreement, shall be liable to interest at twelve per centum per annum.

21. When an arrear of rent remains due from any raiyat at the end of the Bengal year, or at the end of the month of Jeth of the Fasli or Wilaiyati year, as the case may be, such raiyat shall be liable to be ejected from the land in respect of which the arrear is due:

Provided that no raiyat having a right of occupancy, or holding under a patta the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

22. When an arrear of rent shall be adjudged to be due from any farmer or other leaseholder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled, and the leaseholder to be ejected:

Provided that no such lease shall be cancelled nor the leaseholder ejected otherwise than in execution of a decree or order under the provisions of this Act.

23. (1) All suits for the delivery of pattas or kabuliyats, or for the determination of the rates of rent at which such pattas or kabuliyats are to be delivered;

(2) all suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress;

(3) all complaints of excessive demand of rent, and all claims to abatement of rent;

(4) all suits for arrears of rent due on account of land either khiraji or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

(5) all suits to eject any raiyat or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a raiyat may be liable to ejectment or a lease may be liable to be cancelled;

(6) all suits to recover the occupancy or possession of any land, farm, or tenure, from which a raiyat, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same ;

(7) all suits arising out of the exercise of the power of distraint conferred on zamindars and others by sections 112 and 114 of this Act, or out of any acts done under colour of the exercise of the said power as hereinafter particularly provided,

shall be cognizable by the Collectors of land-revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other officer, or in any other manner.

24. Suits by zamindars and others in receipt of the rent of land, against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.

25. If any zamindar or other person in receipt of the rent of land requires assistance to eject any cultivators, farmers, &c., by zamindars. Ejectment of cultivators, vator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act :

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated thika, zur-i-peshgi, or the like, in which an advance has been made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

26. [*Measurement of lands*].—*Repealed by Bengal Act VI. of 1862.*

27. All dependent taluqdars and other persons possessing a permanent transferable interest in land Registry of transfers of taluqs, &c. intermediate between the zamindar and the cultivator are required to register, in the sharishta of the zamindar

or superior tenant to whom the rents of their taluqs or tenures are payable, all transfers of such taluqs or tenures or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance.

And every zamindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions.

If any zamindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the zamindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession :

Provided that no zamindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zamindar or superior tenant.

28. So much of section 10, Regulation XIX., 1793,* and section 24, Regulation XII., 1805, as authorizes and requires proprietors and farmers of estates and dependent taluqs, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said sections, of their own authority to collect the rents of such land, and to dispossess the grantees of the proprietary right in the land, and to reannex it to the estate or taluq in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act.

Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued.*

29. All suits which, under the provisions of this Act, may be brought by or against zamindars or other persons in the receipt of the rent of land, may be brought by or against sarbarahkars, Suits by or against sarbarahkars or tahsildars of estates held khas.

* Certain words after this have been omitted having been repealed by Act I. of 1903.

or tahsildars of estates held under khas management, whether such estates are the property of Government or of individuals.*

30. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within generally, the period of one year from the date of the accruing of the cause of action.

31. Suits for the delivery of pattas or kabuliyats, and for the determination of the rates of rent at which such pattas or kabuliyats are to be delivered, may be instituted at any time during the tenancy.

32. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fasli or Wilaiyati year in which the arrear claimed shall have become due :†

Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under section 13, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year or of the month of Jeth of the Fasli or Wilaiyati year, on account of which such enhanced rent is claimed.

33. Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers for money, papers, or accounts. by an agent may be brought at any time during the agency or within one year after the determination of the agency of such agent :‡

Provided that, if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.

34. Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim, which shall contain the name, description, and place of abode of the plaintiff,

* The second paragraph have been omitted having been repealed by Act I. of 1903.

† Certain words after this have been omitted having been repealed by Act I. of 1903.

the name, description, and place of abode of the defendant, so far as they can be ascertained, the substance of the claim, and the date of the cause of action.

35. The statement of claim shall be presented by the plaintiff or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

36. The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in any manner following or to the like effect:—

I, *A. B.*, do declare that the above statement is true to the best of my knowledge and belief.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

37. [*Statement of claim to be written on stamped paper*].—*Repealed by Act XXXVI. of 1860, s. 1.*

38. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim.

Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

39. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver to the Collector a description of the document in order that the defendant may be required to produce the same.

40. [*Form of plaint in suits for arrears of rent*].—*Repealed by Ben. Act VI. of 1862, s. 1.*

41. If the suit be for the ejectment of a raiyat, farmer, or tenant from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe (as circumstance

may require) the extent, situation, and designation of the same, and, if necessary for the identification of the land, shall set forth the boundaries of such land.

42. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.

43. If the statement of claim be in proper form, the Collector, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant, and if the plaintiff requires the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

44. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence.

It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the form (A) contained in the schedule to this Act, or to the like effect.

45. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable; or, if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's office.

46. If the summons be served personally, the nazir shall endorse on the summons the fact of such service. If personal service be not effected, the nazir shall endorse on the summons the reason of not serving it personally, and how it has been served,

47. If the usual place of abode of the defendant be in another district, the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

48. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next succeeding section, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector.

If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in section 146), the case shall not be brought on the file of suits; but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

49. If in any suit against an under-tenant or raiyat for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant.

When such application is presented, the Collector shall examine the plaintiff or his agent on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *prima facie* grounds for believing the claim to be well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant.

The Collector shall fix a reasonable time for the return of the warrant, which shall be in the form (B) contained in the schedule to this Act, or to the like effect; and the officer entrusted with the service of the warrant shall, at the time of arresting the defendant, deliver to him a notice addressed to the defendant (which shall be in the form (C) in the schedule or to the like effect), containing the particulars of the claim, and requiring the defendant if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence.

But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent taluq or other transferable tenure,

which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

50. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody, unless he deposit in Court such sum as may be specified in the notice.

Procedure after arrest of defendant.

51. When a defendant is brought before the Collector under warrant, the Collector shall, with all convenient speed, proceed to try the case in the manner hereinafter provided: and if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the civil jail to be there detained until he shall furnish such security or deposit such sum as the Collector shall order.

Procedure on defendant being brought before Collector.

The security-bond shall be in the form (D) contained in the schedule to this Act or to the like effect.

Form of security-bond.

52. If the defendant cannot be arrested under the warrant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own office and at the residence of the defendant, fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant.

Procedure if warrant cannot be served.

If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

53. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

54. If, on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the record-

Consequence of neither party appearing on day of trial.

ing of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions.

55. If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default, unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs, provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

When Collector to pass judgment by default, and when to decree upon admission.
Proviso.

56. If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of his Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex-parte* against the defendant.

If plaintiff only appear, Collector may proceed *ex-parte*.

57. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding section, the Collector may, upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

Defendant appearing at postponed hearing may be heard in answer.

58.* No appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

Revival reversal, and alteration of decrees *ex-parte* by default.

But in all such cases, if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shall shew good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit, and alter or rescind the decree, according to the justice of the case.

* As to appeals from orders of Collector under s. 58, see Ben. Act VI. of 1859, s. 13.

But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

59. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other.

If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

At the time of examination, the defendant, if he think fit, may file a written statement of his defence.

60. The examination of the parties or their agents or such other persons as aforesaid shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses.

The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

61. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

62. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

63. If, after the examination required by section 59 and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

64. If on such examination as aforesaid, the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default, or make such other order as he may deem proper in the circumstances of the case.

65. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

66. The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

67.* The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to, and be of equal force and effect in, suits under this Act.

Consequence of parties not appearing on day fixed for trial of issue.

68. If on the day fixed for the trial of any issue neither of the parties appear, the case shall be struck off under the conditions provided in section 54.

* As to the applicability of the provisions of s. 67 to proceedings of Collector under s. 10 of Ben. Act VI. of 1862, see the latter enactment.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

69. When suits under this Act are instituted or defended by

Suits by and against naibs, gumashtas, or other persons employed naib- gumashtas, &c. in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act by which the personal appearance or attendance of parties to a suit is or may be required shall be applicable to such naibs, gumashtas, or other persons: and anything which by this Act is required or permitted to be done by a party in person may be done by any such person as aforesaid.

Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

70. A plaintiff or defendant shall not be required to attend in

Personal attendance when person if of the female sex and of a rank or not required. class which, according to the custom and manners of the country, would render it improper for her to appear in public.

71. Any party to a suit may employ an authorized agent or

Employment of authorized agents or mukhtars. mukhtar to conduct the case on his behalf, but the appointment of such agent or mukhtar shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court.*

72. The Collector may in any case grant time to the plaintiff

Collector may grant time or defendant to proceed in the prosecution or adjourn hearing. or defence of a suit, and may also from time to time, in order to the production of further proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

73. The Collector may at any stage of a case cause a local

Collector may cause local enquiry and report respecting the matter enquiry to be made. in dispute to be made by any officer subordinate to him, or by any other officer of Government with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

* The rest of s. 71, repealed by Act XX, of 1865, s. 3, has been omitted.

The provisions of the law for the time being in force relative to local enquiries by Amins or Commissioners under orders of the Civil Courts shall apply to any local enquiry made by any officer under this section, and, so far as they are applicable, to enquiries made by the Collector in person.

In the latter case, the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

74. [*Payment of money into Court in satisfaction of demand*].
—*Repealed by Ben. Act VI. of 1862.*

75. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

76. If on the trial of a suit for the delivery of a patta instituted by a raiyat having a right of occupancy, the parties do not agree as to the term for which the patta is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper :

Provided that the term shall not in any case be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government :

Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the patta shall not extend beyond the period of the continuance of such interest.

For cultivators not having a right of occupancy, the term of patta shall be exclusively in the discretion of the person entitled to the rent of the land.

77. When in any suit between the landholder and a raiyat or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the raiyat or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be inquired into, and the suit shall be decided according to the result of such inquiry :

Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Proviso.

78. Any person desiring to eject a raiyat or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancellation and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancellation.

In all cases of suits for the ejectment of a raiyat or the cancellation of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

79. [*Judgment how to be pronounced*].—*Repealed by Ben. Act VI. of 1862 s. 1.*

80. When a decree is given for the delivery of a patta, if the person required by the decree to grant such patta refuse or delay to grant the same, the Collector may grant a patta in conformity with the terms of the decree under his own hand and seal, and such patta shall be of the same force and effect as if granted by the person aforesaid.

81. When a decree is given for the delivery of a kabuliyat, if the person required by the decree to execute such kabuliyat shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy or the decree under the hand and seal of the Collector shall be of the same force and effect as a kabuliyat executed by the said person.

82. If the decree be for the ejectment of any raiyat from land occupied by him, or for the reinstatement of any raiyat in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy.

If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same,

Punishment for obstructing execution

83. If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator), or for the reinstatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

Execution of decree for cancelment of lease or ejectment or reinstatement of farmer or tenant.

84. If the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security-bond given under section 51, the Collector may order that he be detained in or committed to the civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

85. If the judgment-debtor have given security for his appearance, and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Liability of surety on failure to deliver judgment-debtor into custody

If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.

86. [*Issue of process of execution*].—*Repealed by Ben. Act VI. of 1862, s. 1.*

87. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs.

Application for execution against moveable property.

In either case the property to be seized shall be pointed out to the officer entrusted with the execution of the process by the creditor or his agent.

88. Every warrant of execution shall bear date on the day on which it is signed by the Collector, and shall continue in force for such period as

Duration of warrant.

the Collector may direct, not being more than sixty days calculated from such date.

89. Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

90. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

91. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

92. No process of execution of any description whatsoever shall be issued on a judgment under this Act after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.

93. If a warrant issue for taking in execution the body of any person, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector.

If such person shall not then deposit in Court the full amount specified in the warrant, or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall, in the meantime, pay the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty rupees, or six calendar months when such amount does not exceed five hundred rupees, or two years in any other case.

If the decree against any person arrested under a warrant be for the delivery of papers or accounts, and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the civil jail, there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall, in the meantime, deliver the papers or accounts according to the terms of the decree.

No second imprisonment under same judgment.

94. Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

If the amount due under the decree do not exceed one hundred rupees, the Collector may declare such discharged person absolved from further liability under that decree.

In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

95. Any person applying for a warrant of arrest under section 49, or suing out process of execution against the body of any person shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas, per diem.

96. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

97. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

98. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

A copy of the said proclamation and list shall be transmitted to the Collector, and shall be affixed in his office.

99. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken.

Custody and sale of moveable property taken in execution.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

The provisions of sections 129 to 133, so far as the same are applicable, shall be applied to sales under this section.

100. If before the day fixed for the sale a third party appear before the Collector and claim a right or interest in any of the moveable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and, if he see sufficient reason for so doing, may stay the sale of such property.

Collector may stay sale of moveable property seized if third party claim interest therein.

101. The Collector shall adjudicate upon such claim, and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit.

Collector to adjudicate such claims.

In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

102. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Claimant failing to establish right liable to compensate judgment-creditor.

103. No appeal shall lie from any order passed by the Collector under the two last preceeding sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

No appeal from order under sections 101, 102.

Proviso.

104. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

Sale not vitiated by irregularity in publishing or conducting.
Proviso.

105. If the decree be for an arrear of rent due in respect of an under-tenure, which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree according to the rules* for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force.

But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force.

If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor, and any such immoveable property may be brought to sale in the manner provided in section 110 of this Act.

106. If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector and allege that such third party and not the person against whom the decree has been obtained is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in section 100 for the examination of third parties, and if he see sufficient reason for so doing, and such party shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale, and proceed to inquire into and adjudicate upon the claim:

If third party claim to be lawful possessor of tenure, Collector to stay sale and to inquire and adjudicate.

Provided that no transfer of an under-tenure which by the provisions of this Act or any other law for the time being in force is required to be registered in the sharishta of the zamindar or superior tenant shall be recognized unless it have been so registered, or unless suffi-

Proviso.

* For these rules, see Ben. Act VIII. of 1865, s. 4.

cause for non-registration be shewn to the satisfaction of the Collector.

107. In trying such claim the Collector shall be guided by the Mode of adjudicating rules contained in this Act, so far as the claims. same may be applicable, and the judgment passed by the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

108. If a decree is given in favour of a sharer in a joint undivided estate, dependent taluq, or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or taluq or tenure, application for the sale of such under tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the district in which the suit was instituted, and the sale of such property, if any, shall have proved insufficient to satisfy the judgment.

In such case such under-tenure, if of the nature described in section 105, may be brought to sale in execution of the decree, in the same manner as any other immoveable property may be sold in execution of a decree for money under the provisions of the two next following sections.

109. In the execution of any decree for the payment of money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor.

110. If the immoveable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of sections 98 and 99 shall be applicable to the execution of such process.

If the property be a saleable under-tenure, it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof,

If the property be an estate or a share of an estate, it shall be

If it be an estate or a share of an estate, sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land-revenue.

111. If, before the day fixed for the sale of any immoveable

Consequence of objection property as aforesaid, objection shall be offered before sale of immoveable property. offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in section 100 for the examination of third parties, and, if satisfied that there is sufficient ground for so doing, shall stay the sale, and proceed to inquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in section 107.

112. The produce of the land is held to be hypothecated for

Produce of land held hypothecated for rent. the rent payable in respect thereof; and when an arrear of rent as defined in section 20 of this Act is due from any cultivator of land, the zamindar, lakhirajdar, farmer, dependent taluqdar, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules:

Provided always that, when a cultivator has given security for

Cultivators who have given security exempt from distraint. the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint:

Provided also that no sharer in a joint estate, dependent taluq, or other tenure in which a division of lands has not been made amongst the sharers,

Proviso. shall exercise the power of distraint, otherwise than through a manager authorized to collect the rents of the whole estate, taluq, or tenure on behalf of all the sharers in the same.

113. Distraint shall not be made for any arrear which has

Distraint when barred. been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

114. The power of distraint vested by section 112 in zamin-

Power of distraint of managers under Court of Wards, &c. dars and other persons entitled to receive rent from cultivators of land may be exercised by managers under the Court of

Wards, sarbarahkars, and tahsildars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by the naibs, gumashtas, and other agents employed by any such persons as aforesaid in the collection of rent, if expressly authorized by power-of-attorney in that behalf :

Provided that, if any illegal act is committed by any such naib, gumashta, or other agent under colour of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

115. Standing crops and other ungathered products of the earth, and crops or other products when gathered but not stored reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act.

But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

116. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

117. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Distress proportionate to arrear.
• List of property served on owner.
Standing crops, &c., when attached, to be reaped and stored by cultivator, or, if he neglect to do so, by distrainer.

118. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose.

If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Crops or products which from their nature do not admit of being stored may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

119. If a distrainer shall be opposed or shall apprehend resistance, and shall desire to obtain the aid to Collector in case of assistance of a public officer, he may apply to the Collector, and the Collector may, if he thinks necessary, depute an officer to support the distrainer in making the distraint.

120. When any person empowered to distrain property under section 112 or section 114 shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority* for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

121. If at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

122. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Civil Court Amin or other officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public officer as the Local Government shall appoint for the purpose.

* Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

123. The application shall be in writing, and shall contain an inventory or description of the property
 Form of application distrained, the name of the defaulter and his place of residence, the amount due and the date of the distress, and the place in which the distrained property is deposited.

Together with the application, the distrainer shall deliver to the Civil Court Amin or other officer the
 Deposit of cost of notice amount necessary for the service of a notice to defaulter. upon the defaulter as hereinafter provided.

124. Immediately on receipt of the application the Civil Court Amin or other officer shall transmit a copy
 Procedure of Amin on receipt of application. of it to the Collector, and shall serve a notice (which shall be in the form (G) contained in the schedule to this Act or to the like effect) on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

125. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector
 Amin to suspend sale on receipt of Collector's certificate of institution of suit. shall transmit to the Civil Court Amin or other officer, or if so requested shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by or presented to the Amin or other officer, he shall suspend proceedings in regard to the sale of the distrained property.

126. A person whose property has been distrained in the manner hereinbefore provided may institute
 Suit to contest distrainer's demand before notice of sale. a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale.

When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding section.

If thereafter application for the sale of the property is made to the Civil Court Amin or other officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

127. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security, binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit; and when such bond is executed, the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same; and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector, the property shall be released from distraint.

128. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court Amin or other officer in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

129. The sale shall be held at the place where the distrained property is deposited, or at the nearest place of public resort, if the Civil Court Amin or other officer should be of opinion that it is likely to sell there to better advantage.

The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

130. If on the property being put up for sale a fair price in the estimation of the officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market-day if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed at whatever price may be offered for the property.

131. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the officer holding the sale shall think necessary; and in default of such payment the property shall be put up again and sold.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

132. From the proceeds of the sale of distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall transmit the amount of the Collector in order that it may be credited to Government.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 124 to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale; and if there be any overplus, it shall be delivered to the person whose property shall have been sold.

133. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

134. Civil Court Amins and other officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under colour of this Act; and if in any case on proceeding to hold a sale of property, the Civil Court Amin or other officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under section 124, or pass such other order as he may think proper.

135. When a Civil Court Amin or other officer has proceeded to any place for the purpose of holding a sale, and no sale takes place either for the reason stated in the last preceding section, or because the demand of the dis-

trainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court Amin or other officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector :

Provided always that in no case shall a larger amount than ten rupees be recoverable under this section.

136. All proceedings under this Act of the Civil Court Amins and other officers as aforesaid shall be subject to the revision and orders of the Collectors and the Collectors, with the sanction of the "Board"* of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court Amins and other officers as may be thought necessary.

137. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court Amin or other officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court Amin or other officer, such Amin or officer shall publish a second proclamation in the manner prescribed in section 124, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and unless the amount adjudged to be due with the costs of distress be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

138. In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act.

If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the

* The word within quotations has been substituted by Act I. of 1903,

distrainer, and the amount may be recovered by sale of the property as provided in the last preceding section if the distress has not been withdrawn, and if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff as the circumstances of the case shall seem to require.

139. If any person shall claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person to try the right to the property in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

When any such suit is instituted, the property may be released upon security being given for the value of the same.

If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require :

Provided always that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

140. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distraint for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent

by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of such inquiry :

Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Court if instituted within one year from the date of the decision.

141. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property, as the case may be, within the period allowed by sections 124 and 139, and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

142. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained.

143. If any person not empowered to distrain property under sections 112 and 114 of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property under colour of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale.

The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

144. Provided always that any suit which may be instituted under any of the last three sections shall be commenced within three months from the date of the occurrence of the cause of action.

145 * If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and if the offence be proved, and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector.

If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or in default of payment thereof, to imprisonment for a period not exceeding two months.

146. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the nazir or by such other officer as the Collector may direct at the cost of the party at whose instance it is issued.

The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued :

Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

147. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and, if, after due service of the summons, he fail to attend, may issue a warrant for his apprehension.

Orders passed by Collectors under this section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of section 151.

148. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his district or local jurisdiction, provided that

* As to immediate disposal of case, where person is arrested under s. 145, see Ben. Act VI. of 1862, s. 18.

every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

149. [*Agents or Mukhtars*].—*Repealed by Act XX. of 1865, s. 3.*

150. [*Powers of Deputy Collectors*].—*Repealed by Ben. Act VI. of 1862, s. 1.*

151. In the performance of their duties under this Act the **Control of Collectors and Deputy Collectors.** Collectors and Deputy Collector shall be subject to the general direction and control of the Commissioners and the "Board"* of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate.

All orders passed by a Collector under this Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof, or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

152. Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days, from the date of the order.

Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case and pass such orders thereon as they may think proper.

153. In suits under clauses 2, 4, and 7 of section 23, and under section 24 of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector shall be final and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a raiyat or tenant, or any question relating to a title to land, or to some interest in land as between

* The word within quotations has been substituted by Act I. of 1903

J. C. Act, 18.9—37.

parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in sections 160 and 161 of this Act.

154. In suits in which the judgment of the Collector is final, Rehearing in suits not as provided in the last preceding section, open to appeal. the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce, at the time of trial.

155. When any such suit as aforesaid, in which, if tried and decided by a Collector, the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

156. The petition of appeal shall be written* and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

157. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default.

If the appellant shall appear, and the respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

158. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the readmission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may readmit the appeal.

* Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

159. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

160. In all suits other than those in which, when tried and decided by a Collector, the judgment of the Collector is declared to be final, or when tried and decided by a Deputy Collector, an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zilla Judge; unless the amount or value in dispute exceed five thousand rupees, in which case the appeal shall lie to the Sadr Court.

161.* The petition of appeal shall be written;† and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zilla Judge or Sadr Court under this Act.

162. [*Revenue-offices in which suits to be preferred*].—*Repealed by Ben. Act VI. of 1862, s. 1.*

163.‡ No Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the district to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the treasury of the said district.

164. No Deputy Collector appointed under Regulation IX., 1833, of the Bengal Code, shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any police-functions.

165. Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

166. Nothing contained in this Act shall be held to affect the rights vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent

* As to appeals under s. 10 of Ben. Act VI. of 1862 being subject to the provisions of s. 161, *see* that enactment.

† Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

‡ Certain words at the beginning of the para. have been omitted having been repealed by Act IV., 1903.

patni-taluks and other similar tenures under the provisions of Regulation VIII., 1819.

167. [*Commencement of Act*].—*Repealed by Act XIV. of 1870, s. 1.*

168. The words "Civil Jail" as used in this Act shall include the civil jail of the zilla and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act:

"Nazir."

The word "Nazir" shall include any officer of a Court authorized to serve or execute its process.*

* Certain words after this have been omitted having been repealed by Act IV., 1903.

SCHEDULE.*

FORM A (*see section 44*).

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated .
 In the Court of .
 A. B., Plaintiff.
 [*Name, description, and address of plaintiff.*]
 C. D., Defendant.
 [*Name, description, and address of defendant.*]

Whereas the said A. B., has brought a claim against you in this Court for [*here specify particulars of claim as given in the statement*], you are hereby required to appear in person in this Court on the day of [if not specially required to appear in person state, "in person or by an agent who has personal knowledge of the subject, or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B (*see section 49*).

FORM OF WARRANT OF ARREST.

No. (of suit) dated .
 In the Court of .
 A. B., Plaintiff.
 C. D., Defendant.
 To the Nazir of the Court of the Collector of .

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 185 .

FORM C (*see section 49*).

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of .
 A. B., Plaintiff.
 [*Name, description, and address of plaintiff.*]
 C. D., Defendant.
 [*Name, description, and address of defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for [*here specify particulars of claim as given in the statement*], and has obtained a

* Owing to the repeal of s. 86, Forms E. and F., therein referred to, became obsolete, and were therefore repealed by Act XII, of 1891, Sch. I.

warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM D (*see section 51*).

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

Whereas *A. B.*, plaintiff, has instituted a suit in the Court of the Collector of against *C. D.*, defendant, and the said *C. D.* has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, *I, E. F.*, hereby declare myself security for the said *C. D.*'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said *C. D.* may be liable under the decree. [*If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*]

FORM E (*see section 86*).

[*Repealed by Act XII. of 1891, Sch. I.*]

FORM F (*see section 86*).

[*Repealed by Act XII. of 1891, Sch. I.*]

FORM G (*see section 123*).

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of

Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description, and address of the owner of the property.*]

Whereas the said *A. B.* has applied to have the distrained property specified below sold for the recovery of , alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said *A. B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this

day of

185 .

ACT NO. XI. OF 1859.*

The Bengal Land-Revenue Sales Act, 1859†

RECEIVED THE G.-G.'s ASSENT ON THE 4TH MAY 1859.

An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.

WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the Province of Katak :

and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured : and whereas it is expedient to afford sharers in estates, who duly pay their shares of the sadr jama of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers : and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents : and whereas it is expedient to provide for the voluntary registration of dependent taluqs existing at the time of settlement : and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale : and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue : and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Bihar, and Orissa ; It is enacted as follows :—

* Act XI. of 1859 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III of 1899, s. 3, in the Santhal Parganas, and under the Scheduled Districts Act (XIV. of 1874), it has been declared in force in West Jalpaiguri and extended to the Darjiling District, Western Dvras, the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhaibhum, and the Kolhan

The Act has been repealed in the territories to which the Assam Land and Revenue Regulation (I. of 1886) extends—See s. 2 of this Regulation.

The words "proprietor," "revenue," "estate," "tenure," "jurisdiction" (of a Collector), "Collector," and "demand," occurring in the Act, are defined in Bengal Act VII. of 1868, s. 1.

Bengal Acts III. of 1862 and VII. of 1868 are to be read with, and taken as part of, this Act.—See s. 30 of the former Act.

The Public Demands Recovery Act (Ben. Act III of 1913), so far as is consistent with the tenor thereof, is to be construed as one with this Act—See Ben. Act I. of 1895.

† This short title has been given by the Repealing and Amending Act I. of 1903.

NOTES.

Object of the Act.—The object of this Act is to give the purchaser a title which cannot be challenged.—8 W. R. 439; 10 W. R. (F. B.) 66.

Act XI. of 1859 and Ben. Acts VII. of 1868 and VII. of 1880—Construction.—Act XI. of 1859 and Ben. Acts VII. of 1868 and VII. of 1880, are under s. 2 of the last mentioned Act, to be construed as if they are all a single Act, as far as construction is consistent with the Act of 1880.—14 C. 1.

1. [*Laws repealed*].—*Repealed by Act XIV. of 1870, s. 1.*

2. If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kistbandi* of any mahal have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

NOTES.

Kist.—This section refers to the *kists* or instalments by which the settlement and *kistbandi* of a mahal have been regulated and not the *kist* or instalment not due in the Collectorate Touzi department.—7 Ind. Cas. 130.

Unpaid.—Payment to Post Office is not equivalent to payment to the Collector.—4 C. W. N. 103.

Arrear.—Revenue payable in January *kist* becomes an arrear on the 1st February next following and not earlier—41 Ind. Cas. 458. When an amount tendered as the January *kist* and the estate was then put up for sale on account of arrears due in respect of an earlier *kist*, held that the Collector acted within his rights in bringing the estate to sale for arrears of the January *kist*.—10 C. W. N. 948. But see 12 C. W. N. 646.

Revenue.—“*Malikana*” comes under the definition of land revenue given in s. 2. The revenue authorities are entitled to calculate the *malikana* and land revenue together.—8 C. W. N. 649=31 C. 256 P. C.=31 I. A. 52.

3. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

And the said Board shall give notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Munsifs, and at every thana-station of that district, and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

NOTES.

This Act does not sanction, and by plain implication forbids the sale of any estate which is not, at the time, in arrear of Government revenue.—25 C. 833 P. C.—25 I. A. 151—2 C. W. N. 513.

When an arrear of revenue has not been paid within the latest date fixed for payment, no payment or tender of payment, made after sunset of such date can bar or interfere with the sale, either at the time of the sale or after its conclusion.—2 C. L. J. 325. See also 13 C. L. R. 1 (F. B.).

The latest day for the payment of Government revenue in the case of any new estate formed after partition of a parent estate must be fixed in accordance with the provision contained in Rule No. 1 of the Board's Rule issued under the powers conferred by this section and any Revenue Circular issued by the Board or any Rule framed by the same, in any way affecting Rule No. 1 must be advertised and notified as required by this section before such a circular or a sale may have the force of law and when not so published, it is *ultra vires*. Any sale held for arrears of revenue which could not have been due, if the *kist* were fixed under Rule 1 of the Board Rules is invalid and illegal and therefore liable to be set aside.—8 C. W. N. 26.

Kist fixed by the Board of Revenue.—Default of payment of one *kist*—proprietor of estate, if entitled to pay the whole demand on the date fixed for the last *kist*. Held that the plaintiff was not entitled to pay the whole demand of one year on the 28th March and the Revenue authorities have every right to sell the estate.—7 C. W. N. 570.

4.* [*In Sylhet, personal property of defaulters may in first instance be distrained and sold*].—Repealed by Act XII. of 1891, Sch. I.

5. Provided always that no estate, and no share or interest

Proviso as to certain de- in any estate, shall be sold for the recovery
scriptions of arrears, of arrears or demands of the descriptions

mentioned below, otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act, in the office of the Collector or other officer duly authorized to hold sales under this Act in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Munsif's Court and police-thana of the division in which the estate or share of an estate to which the notification relates is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Munsif's Court or police-thana, in some one or more of such Courts or thanas; and also at the kachari of the malguzar or owner of the estate or share of an estate, at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the year immediately preceding.

* This Act has been repealed in Sylhet by Reg. I. of 1886, s. 2.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of takkavi, pulbandi, or other demands not being land-revenue, but recoverable by the same process as arrears of land-revenue.

NOTES.

Estate.—The word "estate" in the description attached to this section means not only a whole estate, but applies also to such shares as are referred to in the first portion of the section.—13 W. R. 423.

Arrears.—Sale without arrears is absolutely void.—13 W. R. 381=5 B. L. R. 135.

Notification.—The object of a notification under this section when the estate is under attachment, is to protect the interest of the attaching creditor—1 C. L. J. 565. Omission to issue the same is not cured by the issue of certificate under s. 28, *ibid.* The non-issue of a notice under this section is an irregularity of the nature contemplated in s. 33 of the Act and if not specified in an appeal to the Commissioner cannot be urged in a subsequent suit (8 C. W. N. 757—see also 15 W. R. 157) and notification in this section does not operate as an attachment.—9 W. R. 481.

Current year.—The expression "current year" in this section is to be understood as referring to the year in which the latest date for payment falls as fixed under s. 3 and not the year in which the sale of the property ultimately takes place. 7 C. W. N. 377. The words "current year" in this section mean the official year (1st April to 31st March) and not the calendar year (January to December).—5 C. L. J. 425=34 C. 381.

A sale under the provisions of this Act is not bad because the arrears for which the estate was actually sold included, besides arrears specified in a notice under this section, arrears which accrued due subsequently to the issue of such notice. 8 C. W. N. 649.—See also 11 C. W. N. 1107.

Arrears of estates under attachment.—In order to come under the protection of the clause (3) it is not necessary that an estate under attachment by order of a judicial authority must also be managed by some Revenue authority, as all estates under attachment whether managed by Collector or not are entitled to the benefit of the special notice described in this section—13 W. R. 423. Where an estate or a share of an estate, not severed for the purpose of revenue, is under attachment by order of a Civil Court in execution of decree, such estate or share cannot under this section be put up to sale without notification required by this section—12 B. L. R. 292=1 I. A. 89 (P.C.). The words "arrears of estates under attachment" in the above section are not confined to estates the whole of which is under attachment, *ibid.* But there is nothing in this section which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale. A sale in contravention of s. 5 is *ultra vires* and therefore void—13 M. 89. A notice issued by the Collector under Act VII. of 1880 (Bengal), s. 10 is not an attachment as contemplated by s. 5; 20 C. 325. Where there is no subsisting attachment on the property at the time when it was sold, it was held that the omission to issue notice under s. 5 did not vitiate the sale—21 C. 354; see also 10 C. W. N. 17=2 C. L. J. 325. This section provides for cases in which the attachment has been made at least 15 days before the last date of payment for which it is sought to bring the estate to sale.—22 C. 738.

A purchaser of a share of an estate at a Revenue-sale during the pendency of execution proceeding on a mortgage-decree, that is after the mortgage sale and before its confirmation, is affected by the doctrine of *lis pendens*.—10 C. L. J. 590=4 Ind. Cas. 731.

Land-revenue.—The embankment charges ordered to be levied under the certificate Act are taken out of the purview of this Act, unless and until fresh notices are issued under s. 5 and they cannot be treated as land-revenue.—42 C. 765=19 C. W. N. 507 (P. C.).

6. The Collector or other officer duly authorized to hold sales

Issue of notifications of under this Act shall as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, issue notifications in the language of the district, to be affixed in his own office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than thirty* clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid.

And if the Government revenue of any estate or share of an estate to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate shall be published in the official Gazette.

Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by, and in the presence of, the Collector or other officer as aforesaid, and shall be sold to the highest bidder.

And no payment or tender of payment, made after sunset

Tender after latest day of of the said latest day of payment, shall bar payment not to stop sale. or interfere with the sale, either at the time of sale or after its conclusion.

NOTES.

1. Collector or other officer etc.—Sale proceedings under this Act do not become void by reason of the notices under ss. 6 and 7 of the Act having been fixed by a sub-deputy Collector instead of the Collector or other officers authorized to hold sales under the Act.—22 C. W. N. 769=28 C. L. J. 51=46 Ind. Cas. 447 (F. B.).

2. Notifications in the language of the District.—Failure to notify in the vernacular Government Gazette, the sale of an estate, the government revenue of which exceeds Rs. 500 is not an illegality which *per se* vitiates the sale as having been made "contrary to the provisions" of Act XI. of 1859. It is a sufficient compliance with paragraph 2 of this section if the sale is notified in the official Gazette published in Calcutta.—16 A. L. J. 915=35 M. L. J. 644 (P. C.)=47 Ind. Cas. 995.

Specifying estates or shares of estates.—Under this section it is not necessary that a notification should specify the owners of an estate or the

* The word "thirty" in s. 6 has been substituted by Ben. Act VII. of 1868, s. 3; and certain words, repealed by the same enactment, have been omitted.

owners of the shares in the estate. All that is necessary under that section is that the notification should specify the estate or shares in the estate to be sold; and in selling a share in an estate it is unnecessary to specify the shares or mouzas of which that share is composed. The word "estate" as here used, ordinarily means "mehal," but the term also applies to a portion of a "mehal" with regard to which a separate account has been opened, but not to an undivided portion of a "mehal" with regard to which separate account are not kept. 13 C. 208; 9 C. 591=12 C. L. R. 27. So where the share to be sold could not be ascertained from the sale notification there was a material irregularity. 8 C. W. N. 337; 9 C. W. N. 487; 9 C. W. N. 348=1 C. L. J. 91=32 C. 509. It is not necessary under the law to enter the names of any proprietors at all. 8 C. W. N. 757. Merely advertising that the "residue" of an estate is to be sold without giving further particulars and stating what that residue is, cannot be considered to be sufficient description. The estate or share to be sold must be specified. 2 C. W. N. 479; 32 C. 542=9 C. W. N. 487; 9 C. W. N. 343 (F. B.)=1 C. L. J. 14=32 C. 502. The object of the law as well as the Board's rules requiring specification of the properties to be sold is to enable likely purchasers among the public to know exactly what was going to be sold and to ensure thereby reasonable competition. 19 C. W. N. 481 (P. C.). See also 2 P. L. J. 402=40 Ind. Cas. 13; 2 P. L. J. 402 (F. B.). Where a misstatement of the name of the proprietor in a sale notification issued under this Act has misled intending bidders, it is irregularity such as is contemplated by s. 33 of the Act. 14 C. W. N. 626=5 Ind. Cas. 650. But a sale ought not to be set aside unless the irregularities are such as would be considered material and would necessarily induce inadequacy of price.—9 C. W. N. 348.

Thirty clear days.—Where the notification had not been affixed thirty days before the day fixed by it for holding the sale the requirements of this section had not been fulfilled. 11 C. L. R. 466=9 C. 271. But it does not make the sale a nullity. The sale in such a case is a sale under the provisions of the Act and the restrictions imposed by it on the right of the defaulter to have the sale set aside apply. 16 C. W. N. 227=13 Ind. Cas. 403. Section 8 of the Public Demands Recovery Act has no application in a case where the notices under this section had been affixed less than 30 days before the sale.—2 Ind. Cas. 380; 7 C. W. N. 377; 30 C. 1=6 C. W. N. 688; 11 C. 200 (F. B.).

Non-service of notice.—The non-compliance with the provisions of this section is not a mere irregularity, and is not one of those errors in procedure, which are intended to be cured by Act VII. of 1868.—11 C. 200; 17 C. 398; see also 20 C. 325; 21 C. 70.

Sales of tenures.—Act VII. of 1868 (Bengal) makes the Sunset Law as enacted in this section applicable to sales of tenures under the former Act.—21 C. 360; see also 21 C. 844.

Official Gazette.—The publication of a notification in the *Calcutta Gazette* only is a sufficient compliance with the provision of law requiring the publication of such notification in the official Gazette.—17 C. W. N. 1135.

Power of Collector.—The Collector has not an innate power to sell; his power to sell is that which is vested in him by legislature; and he is entitled to sell a revenue unit, in its entirety, whether it be an estate, or a share, and nothing less. He is not entitled to dismember that revenue unit for the purposes of realisation of arrear.—16 C. L. J. 524.

Certificate of sale.—As to, whether conclusive evidence of service.—*Vide* 6 C. W. N. 688.

Previous payment.—*Held*, that the sale is not a valid sale, the payment of the May instalment having been received by the Collector before the due date, although for the want of making proper enquiries the officers in the Collectorate were not aware in respect of which taluk the payment had been made and, therefore could not credit the payment to the taluk in question.—42 Ind. Cas. 500,

Highest bidder.—Must be sold to the highest bidder—8 W. R. 372. A former proprietor or co-sharer can be a purchaser.—11 W. R. 265.

7. Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district, in his own office, and as soon thereafter as may be in the Munsif's Courts and police-thanas within which the estate or share of an estate, or any part of it, is situated, and also at the kachahri of the malguzar or the owner of the estate or share of an estate, or at some conspicuous place upon the estate, or share of an estate, forbidding the raiyats and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

NOTE.

Object.—The object of notification under this section is to give notice to, the *ryots* not to pay rent to defaulting zemindars so non-service of such notifications could not be a ground of invalidating the title of the auction-purchaser.—13 C. L. R. 1. This notice is required because the title of the auction-purchaser relates back to the date of the default; the omission to issue such notice cannot, therefore, be connected with any substantial injury resulting from the sale—2 C. L. J. 325. See also 21 C. 360 (F. B.). But the mere fact that notice under this section was not served in accordance with the provisions of this section does not necessarily lead to an inference of substantial injury to the proprietor—10 C. W. N. 137—2 C. L. J. 325; 6 C. W. N. 688. In the absence of proof that a person had sustained substantial injury on account of the omission to issue notice under this section, such omission did not invalidate the sale.—21 C. 354.

8. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue due.

NOTE.

Vide 2 C. W. N. 360; 2 C. W. N. 513 (P. C.); 25 C. 833 and 42 Ind. Cas. 500.

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive from the proprietor or other person entitled to pay the same, the amount of the arrear of revenue due, and shall thereupon transfer the same to the Collector, and shall thereupon issue a receipt for the same to the proprietor or other person entitled to pay the same.

Act, receive as a deposit from any person, not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

NOTES.

Deposit by a person who is not a proprietor.—This section does not allow of deposits on account of Government revenue by a defaulting proprietor himself—12 W. R. 249. Where the mortgagee is a part proprietor of an estate this section does not entitle him to claim a lien on the mortgaged property for sums paid by him on account of Government revenue. But according to the general principles of justice, equity and good conscience he is entitled to the benefit of any such lien—30 C. 794—7 C. W. N. 609. See also 8 W. R. (P. C.) 17; 14 C. 809 (F. B.); 15 C. 542; 22 M. 332; 31 C. 975. The Court can direct recovery of money from the co-sharer if a suit is brought under this section.—25 W. R. 385; 11 W. R. 377; 12 C. 213.

Defaulting proprietor.—The expression “defaulting proprietor” in this section means where there is more than one proprietor, the entire body of such proprietors.—16 C. L. J. 148.

10. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application* to that effect.

Separation of shares held in common by opening separate account.

* As to fees chargeable on applications under s. 10, see Ben. Act III. of 1864.

The application must contain a specification of the share held in the estate by the applicant.

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Munsifs, and in the police-thanas in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him.

If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account* with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

NOTE.

Scope.—There is nothing in s. 10 which enacts that, if the share of the applicant shall not be such as he states it to be, the co-sharer shall not be able to bring a suit in the Civil Court to establish the extent of their shares, in the event of the Collector under the Butwara law, rejecting their application for a division of their specific shares—16 W. R. 9. For definition of share *vide*, 1 W. R. 26. The holder of an undivided moiety of four mouzas out of the six which constitute an estate cannot sue under s. 10—21 W. R. 38. The Collector when he opens a separate account under this section and s. 11 performs a statutory duty, his act must be in conformity with the legislative provisions on the subject. If the Collector opens a separate account in clear contravention of the provisions of ss. 10 and 11, in fact, if the Collector applies the provisions to cases to which the Legislature never intended that they should be applied, his act is without jurisdiction, and cannot confer upon the person, who obtains a separate account opened under such circumstances, the statutory privileges created by s. 53 of the Act—14 C. L. J. 552.—See also 17 C. 148.

11. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application† to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of *sadr jama* heretofore paid on account of it.

On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section.

* As to opening a separate account under s. 10, see Ben. Act VII. of 1876, s. 69.

† As to fees chargeable on application under s. 11, see Ben. Act VII. of 1876, s. 69.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account* with the applicant, and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

NOTES.

Jurisdiction of Civil Court.—Where the Collector has allowed separate account to open the Civil Court has jurisdiction to try the suit, 6 B. L. R. 614= 15 W. R. 112 but *see* 9 W. R. 533. The provision of this section must be strictly obeyed by the Collector.—14 C. L. J. 552.

Effect of sale.—*Vide* 20 W. R. 264; 22 W. R. 450; 18 W. R. 461; 12 W. R. 243; 17 C. 148; 6 C. L. J. 163; 14 C. W. N. 626=5 Ind. Cas. 670.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, if objection be made, parties to be referred to Civil Court, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of *sadr jama* stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the *jama* thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

NOTE.

Reference to Civil Court.—Where an application is made to a Collector by a registered proprietor for a separate account, and the application is objected to within the meaning of this section or the Collector considers that an objection is regularly taken, he has no jurisdiction to dispose of the matter but should refer the parties to the Civil Court.—13 W. R. 67; 15 W. R. 112; 16 W. R. 9.

13. Whenever the Collector shall have ordered a separate account or accounts, to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in s. 6 of this Act. The share or shares sold, together with the share or shares excluded from

* As to opening a separate account under s. 11, *see* Ben. Act VII. of 1876, s. 69.

the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of jama assigned thereto.

NOTES.

Ordered a separate account.—This section requires a sale to be confined to the share for which an arrear of revenue is due when a separate account has been ordered by Collector, not merely applied for.—7 W. R. 154.

What the auction-purchaser acquires.—The auction-purchaser of a share of an estate sold under this section does not acquire it free of encumbrances or with the right to avoid under-tenures. 12 W. R. 440=3 B. L. R. 446; *see* also 6 C. W. N. 317; 30 C. 1071. A purchaser under this section does not merely acquire the right, title and interests of the defaulting proprietor, but he takes the shares itself which is exposed for sale subject to the limitations prescribed in the section—7 C. L. J. 1. So the purchaser is entitled to that share, even if a person other than the recorded proprietor has acquired a title by twelve years adverse possession previously to the sale. 13 C. W. N. 407=1 Ind. Cas. 81; 19 C. W. N. 782=29 Ind. Cas. 350. So also a purchaser of a share of an estate of a Hindu widow, at a sale for arrears of revenue under this section does not acquire merely the right, title and interest of the widow but he takes the share itself which is exposed for sale.—22 C. 641.

Estate.—The term “estate” as used in the clause “if the estate shall become liable to sale” in this section means the entire estate out of which the separate share has been served.—18 C. L. J. 505. A Co-sharer is not under any legal obligation to his Co-sharers to pay his share of the Government Revenue.—18 C. L. J. 97.

Description of property in the notification.—In a notification issued under this section, the details of the shares about to be sold were fully given, but certain separate account shares which were excluded were not mentioned. It was however explained in a note at the foot of the notice that “when in certain columns of the notice there is an entry that only a share is to be sold, then it ought to be understood that there is a separate account in respect of such a share and that other share or shares will be exempted from sale” and in this notice there was such an entry in the columns mentioned. *Held* that the provision of this section has been complied with.—8 C. W. N. 757. *See* also 8 C. W. N. 337.

14. If, in any case of a sale held according to the provisions
 Entire estate may be sold of the last preceding section, the highest under certain conditions. offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall, within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

NOTES.

Ten days.—The period prescribed in this section runs from the time when the notice of the order of the Collector is given to other sharers and not from the date of sale.—21 C. 844.

Notification.—The Collector is not by the Act bound to give notice to the Co-sharers, under this section, of the declaration that the whole estate would be sold, if they did not pay up the arrears due from the defaulting sharers. All that is necessary under this Act is that the declaration should be made. It need not be notified.—5 C. L. J. 525=34 C. 381.

Invalid Sale.—*Vide* 19 C. W. N. 764 P. C.; 31 Ind. Cas. 743.

Certificate to purchaser.—Payment by different Co-sharers entitles them equally.—4 C. W. N. 465.

15.* If any recorded proprietor or co-partner of an estate shall deposit with the Collector money or Government securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jama of the entire estate, and authorizing the Collector to apply, to the payment of any arrear of revenue that may become due from that estate, the whole or any portion of the said money or securities that may be necessary for that purpose, then, in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

And, so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate, for the protection of which the said deposit was made, shall be exempted from sale for arrears of revenue.

All moneys and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

NOTE.

Vide 8 C. W. N. 649; 12 C. W. N. 646=8 C. L. J. 41=35 C. 636.

* As to fees chargeable on application under ss. 15 and 16.—*See* Ben. Act III. of 1862, s. 3.

16.* It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time to withdraw the deposit, and to revoke the pledge of the same.

17.† No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and, no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI, 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same until the minor or minors, or one of them, shall have attained the full age of eighteen years.

And no estate held under attachment by the Revenue-authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue-officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

NOTE.

Estate under attachment.—A sale for arrears of revenue, if for arrears which have accrued while the land has been subject to an order issued by the Collector under the Bengal Cess Act, for the levy of road cess in arrear, is contrary to this section such an order being an attachment within the meaning of that section—21 C. 70 P. C.—20 I. A. 165. There is nothing in s. 5 which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale. A sale in contravention of ss. 5 and 17, is *ultra vires* and therefore void.—13 M. 89.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption:

* As to fees chargeable on applications under ss. 15 and 16, see Ben. Act III. of 1862, s. 3.

† Part of s. 17, repealed by Ben. Act III. of 1881, has here been omitted.

Provided, however,* that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

PROVISO.

NOTE.

Nature of order.—An order under this section should be an absolute exemption and not an order which may have effect as an exemption or not, according to what may happen or be done afterwards. The reason for the exemption must be recorded at the time.—7 Ind. Cas. 130; 17 C. 809=17 I. A. 57; 13 C. L. R. 1. The Civil Court has no jurisdiction to examine the reasons of such an order.—10 C. W. N. 137.

19. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land revenue office at the sadar station of the district: Provided, however, that it shall be competent to the "Commissioner"† to prescribe a place for holding sales other than such office whenever "he"† shall consider it beneficial to the parties concerned.

20. In case the Collector or other officer as aforesaid shall be unable, from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by written proclamation stuck up in his kachari; and so on, from day to day, until he shall be able to commence upon or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

Adjournment of sales

NOTE.

When adjournment allowed.—The only causes for altering the day of sale under this section are sickness, the occurrence of a holiday or any similar cause. Where a notification has not been issued by the Collector in proper time, the Collector has no power to alter the date under this section.—9 C. 271=11 C. L. R. 466.

21. On the day of sale fixed according to section 6 of this Act sales shall proceed in regular order; the estate to be sold bearing the lowest number on the tauji or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up

Order of selling.

* Certain words here have been omitted by Act I. of 1903.

† The words within quotations have been substituted by Act IV. of 1914.

any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in section 22 of this Act.

22. The party who shall be declared the purchaser of an estate Deposit on account of or share of an estate at any such public sale purchase-money. as aforesaid shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal* postbills, "currency-notes"† or Government securities, to be valued at the market-rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit the estate or share shall forthwith be put up again and sold.

NOTE.

Purchaser.—The expression "purchaser" in s. 37 does not mean the certified purchaser only, that is, the term is not confined to the person who has been declared the purchaser of the estate under this section.—7 Ind. Cas. 849.

23. The full amount of purchase-money shall be made good Full Payment of purchase-money. by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth, and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be resold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold.

And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner herein-after prescribed for the disposal thereof.

24. When default is made in the payment of purchase-money, a notification of the intended resale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and, if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or

* Here the words "notes or" have been repealed by the Repealing and Amending Act (I. of 1903).

† The words within quotations have been inserted by Act (I. of 1903).

share before sunset of the third day, the issue of the notification of resale shall be stayed. The rules contained in the last preceding section shall be applicable to every such resale.

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

25.* It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act or the said Act of 1859† so that such appeal be preferred to such Commissioner on or before the sixtieth day from the date of sale, reckoning as in s. 23 of the said Act XI. of 1859, or be presented to the Collector or other officer duly authorised to hold sales under the said Act for transmission to the Commissioner, on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise. And the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act XI. of 1859, which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale shall have been occasioned by the neglect of the proprietor, such compensation not to exceed the interest, at the highest rate of the current Government Securities, on the amount of deposit of balance of purchase-money during the period of its being retained in the Collectors' office; and the order of the Commissioner shall in such cases be final.

NOTES.

Repeal.—This section was repealed by Ben. Act VII. of 1868, but it was re-enacted with an extension of time for appealing and some other variation by s. 2 of the Act of 1868.—21 C. 70 P. C.

Sixtieth day.—The appeal contemplated by this section must be preferred to the Commissioner not later than the sunset of the sixtieth day from the day of sale, reckoning that day as one of the sixty—6 C. L. J. 472. See also 2 Pat L. J. 402 (F. B.). The question of limitation cannot be held to be one of jurisdiction, and the grounds of the Commissioner for allowing an appeal for setting aside a sale under this section alleged to be time-barred cannot be discussed in the High Court.—25 C. 787.

Final.—An order of a Commissioner setting aside a sale for arrears of revenue, which is "final" according to this section is not open to review by the Commissioner. 40 C. 552=17 C. W. N. 485 P. C. The word "final" in this section as amended by s. 2 of Act VII. (B. C.) of 1868, must be interpreted

* This section has been repealed and replaced by s. 2 of Act VII. (B. C.) of 1868. —Vide Per Lord Macnaghten in 21 C. 70, P. C. at page 81. But strictly speaking this section has been repealed by Ben. Act VII. of 1868.

† Here certain words have been omitted by Ben. Act VII. of 1860.

as meaning at least "not open to review."—11 C. W. N. 803=6 C. L. J. 84, *see* also 22 C. 419.

Jurisdiction of Civil Court.—This section [does not bar a civil suit for setting aside a sale in enforcement of a certificate issued under the Public Demands Recovery Act VII. (B. C.) of 1880, on the ground that the sale was vitiated by a material irregularity leading to substantial injury, the irregularity complained of being that one property was admitted for sale and a different property sold. An appeal to the Commissioner under this section is not the sole remedy open to the party whose property has been sold. 29 C. 73 (F. B.)=5 C. W. N. 521 (14 C. 1, 23 C. 641 overruled; this case has been followed in 28 C. 813=6 C. W. N. 331; 33 C. 451=3 C. L. J. 230=10 C. W. N. 347, approved in 5 C. L. J. 555 and referred in 30 C. 419, 32 C. 1130=1 C. L. J. 542). But in every case where a sale for arrears of revenue is impeached, as being contrary to the provisions of Act XI. of 1859, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under this section. 21 C. 70=20 I. A. 165; 32 C. 111=8 C. W. N. 757. A suit by a purchaser of an estate sold for arrears of Government revenue to recover compensation awarded to him under this section by a Commissioner who set aside the sale can be maintained in a Civil Court.—1 C. W. N. 447.

Power of Commissioner.—Under this section the Commissioner has jurisdiction to annul a sale which may appear to him not to have been conducted according to the provisions of the Act.—52 Ind. Cas. 990. The whole clauses of this Act, in so far as these relate to sale, or to their challenge at the instance of the proprietor, as well as the provisions of s. 2 of the Bengal Act VII. of 1868 are framed upon the express footing that they are to be applicable to the sale of the estates which are in arrear.—25 C. 833 P. C.=25 I. A. 151=2 C. W. N. 513.

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to annulment of sale in special cases. suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who* may annul the sale, and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

NOTE.

Annulment of sale in cases of hardship.—The object of this Act is to give the purchaser a title which cannot be challenged. A sale may be set aside for irregularity under s. 25 or under s. 26 where hardship or injustice is disclosed. 8 W. R. 439; 10 W. R. (F. B.) 16. In a suit to set aside a revenue sale in the Civil Court, hardship is a matter which cannot govern the decision of the Court, as the Revenue authorities alone, have the power to set aside a sale on the ground of hardship under this section.—7 Ind. Cas. 130.

27. All sales of which the purchase-money has been paid up as prescribed in s. 23 of this Act, and Sales when final. against which no appeal shall have been preferred, shall be final and conclusive at noon of the sixtieth† day from the day of sale, reckoning the said day of sale as the first of the said sixty† days.

* Here certain words have been omitted by Act IV. of 1914.

† The words "sixtieth" and "sixty" in s. 27 have been substituted for the words "thirtieth" and "thirty" respectively by Ben. Act VII. of 1868, s. 4.

And sales against which an appeal may have been preferred and dismissed by the Commissioner shall be final and conclusive from the date of such dismissal, if more than sixty* days from the day of sale, or, if less, then at noon of the sixtieth* day as above provided.

NOTES.

Title of the purchaser.—Under this section the title automatically rests in the purchaser at the revenue sale by reason of the sale and payment of the purchase-money. It becomes complete as soon as the sale becomes final and conclusive even though possession is not obtained. The certificate of sale does not create title it is mere evidence of title.—7 C. L. J. 387; 10 C. W. N. 948= 33 C. 1193.

Appeal may have been preferred.—An appeal preferred after the period of limitation is not an appeal preferred within the meaning of this section

Certificate issued before expiry of sixty days.—Certificate of title under s. 28 and 11 of Act VII. of 1868 is not a certificate duly issued under the provisions of these Acts, if it has been issued before the expiry of sixty days from the date of sale, as required by this section.—18 C. 125.

28. Immediately upon a sale becoming final and conclusive, the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own office and in the Courts of the Munsifs and police-thanas within whose jurisdictions any part of the estate or share sold shall be situated.

NOTE.

Certificate.—A certificate of sale granted under this section cannot be regarded as conclusive title—14 Ind. Cas. 10. The grant of a certificate to the purchaser under this section is conclusive evidence that the notice required by s. 7 to be served in mehal has been duly issued and served. 2 C. L. J. 325; 1 C. L. J. 565. As to effect of certificate issued before time *vide* 18 C. 125 noted under s. 28. As to purchasers right and liability *vide* 27 C. 290. See also 26 C. 414 (F. B.)=3 G. W. N. 233.

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, and by affixing a copy of the certificate at the mál-kachahri or in some conspicuous place of the estate or share of an estate purchased.

NOTE.

Suits for delivery of possession.—A suit for delivery of possession can be brought within 12 years from the date of symbolical possession. 6 C. L.

* The words "sixteen" and "sixty" in s. 27 have substituted for the words "therein" and "thirty" respectively by Ben. Act VII. of 1868, s. 4.

R. 539, *see* also 4 C. 103. The delivery of possession by the Collector under this section does not convert undertenure-holders into trespassers. The "persons" whom, in terms of that section, the Collector may remove in delivering possession, must refer to the former proprietors or persons claiming proprietary right through them, and the words "any person" do not refer to undertenure-holders—17 C. W. N. 984=19 Ind. Cas. 974. An encumbrance or an under-tenure is not *ipso facto* avoided by a sale of an estate for arrears of revenue, and is only liable to be avoided at the option of the purchaser at such sale, an option which may be exercised by the institution of a suit under s. 37, within the time allowed by law or by actual ejectment by the Collector under this section.—6 C. L. J. 472.

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

31. The Collector shall apply the purchase-money, first, to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and, secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or, if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And if, before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

NOTES.

Scope.—This section must be read very strictly—11 C. 359. This section provides that the purchase money, after paying the public claims, shall be held on account of the recorded proprietors, provided that if before payment the same be claimed by any creditor in satisfaction of a debt, it shall not be paid over without a decree of the court, but the section nowhere transfers any charges from the property to the proceeds, and as the revenue sale conveys a title from encumbrances to the purchaser the mortgagees are clearly entitled to claim the same as creditors under the section and the court would undoubtedly direct that such claims, in order of priority, should be satisfied out of the sums in the hands of the Collector.—27 C. L. J. 303=22 C. W. N. 505 P. C. This section does not vest the surplus sale proceeds of property sold for arrears of Government revenue in the Collector as trustee—18 C. 234. Under this section an assignee of the recorded proprietors of an estate is not their representative, so that the Collector is justified in refusing to pay to such assignee claiming on his own behalf the money held in deposit on account of the recorded proprietors as the surplus sale-proceeds of their estate under the Bengal Land Revenue Sales Act.—31 C. L. J. 372=24 C. W. N. 294; 11 C. 359. *See* also 27 C. 180.

32. The annulment by a Commissioner or by "the Board of Notification of annulment Revenue"* of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by section 28 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of "section 2 of the Bengal Land Revenue Sales Act 1868"† or section 26 of this Act.

NOTE.

Where *howala* and *neem-howla* tenures, recorded as rightful tenures of those classes at the first settlement, have never been set aside by the revenue authorities the holders are not liable to ejectment under this section, so long they pay their settlement *jumma*.—7 W. R. 50.

33. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under "section 2 of the Bengal Land-Revenue Sales Act 1868"* and no suit to annul a sale made under this Act shall be received by any Court of justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money:

Provided, however, that nothing in this Act contained shall be construed to debar any person, considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

NOTES.

Scope.—This section not only applies to sales under s. 14 but also to sales by public auction—21 C. 844. But where the plaintiff has suffered no injury this section is fatal to the suit for setting aside a sale under s. 14 (a)—41 C. 1092.

* The words within quotations have been substituted by Act IV. of 1914.

† The words within quotations have been substituted by Act I. of 1903.

This section applies not only where the sale has been irregularly conducted but also where the sale has been illegal as held in contravention of an express provision for exemption.—22 C. L. J. 525.

Irregularity.—Want of previous notice is sufficient to warrant a Court in annulling a sale under this section—15 W. R. 137; 14 C. 1. Where a notification of sale of a share in a revenue-paying estate is issued under s. 6, the circumstance that such notification does not contain the names of all the recorded proprietors of the share, does not amount to an irregularity within the meaning of this section. 9 C. 591—12 C. L. R. 27; see also 17 C. 809—17 I. A. 57. This section is not applicable to a transfer by the Collector of the defaulting share under s. 14.—21 C. 844. The onus of proving that there has been an irregularity in the preparation, service or posting of the notice rests on the person who seeks to have the sale set aside.—6 C. W. N. 688; see also 6 C. W. N. 526. A sale of an estate for arrears of embankment charges is not a sale for arrears of land-revenue, and it is not competent to the Collector to hold such a sale under this Act—7 Ind. Cas. 43. Under rule 29 of the Land Revenue Rules it was the duty of the collectorate to give the remitters an opportunity to rectify the mistakes made by him and an endorsement on the back of the money order that the remitter would be liable for any mistake and the collectorate would be guided by the Touzi number, did not relieve it from that duty, 9 C. W. N. 300. The non-issue of a notice under s. 5 does not validate a sale for arrears of revenue, the same being merely an irregularity contemplated by s. 33.—32 C. 111—8 C. W. N. 757; see also 14 C. W. N. 626—5 Ind. Cas. 650; see also 10 C. 63.

Appeal to the Commissioner.—In a suit to set aside a revenue-sale the plaintiff cannot urge any ground which he did not take in his appeal to the Commissioner, 47 Ind. Cas. 422; 2 C. L. J. 325; 1 W. R. 356; 8 W. R. 439; 10 W. R. (F. B.) 66; 12 W. R. 311; 13 W. R. 336; 13 W. R. 381. But where an appeal was rejected as being filed out of time the Civil Court can entertain the objection to the sale, although the point had not been considered and disposed of by the Commissioner—2 C. W. N. 513. A suit to set aside sale for arrears of road and public works cesses would lie without previous application to the Commissioner.—25 C. 85.

Limitation.—The provisions of this Act are complete and therefore s. 7 of the Limitation Act has no application to a suit to set aside a revenue sale, 13 C. W. N. 518—4 Ind. Cas. 70. Where one of the several co-sharers fraudulently contrived to have an estate brought to sale under this Act and purchased it in the benamee of his son. Held that another co-sharer aggrieved by the sale could maintain a suit to have the property reconveyed, the period of limitation is over.—3 C. 300; 10 C. 63; 16 C. 194.

Receipt of purchase-money.—The receipt by a decree-holder of a portion of the surplus sale-proceeds lying in deposit in the Collector's Court, without opposition on the part of the judgment debtor is not such a receipt as is contemplated by s. 33—13 W. R. 423.

Damage—This section contemplates an action against the individual wrong-doer, irrespective of Government and co-parceners.—10 W. R. 442.

Jurisdiction of Civil Court.—The wording of this section is not restrictive so as to debar a person, who has in the property sold a substantial interest which is liable to be affected by the sale, from instituting a suit to set aside the sale—7 C. W. N. 377; 5 M. I. A. 447; 17 C. 398; 21 C. 70; 8 C. W. N. 757; 16 C. W. N. 137. This section applies to sales under s. 14—18 C. W. N. 1071. Where there is no arrears the Civil Court has jurisdiction to set aside the sale.—25 C. 833 P. C.—25 I. A. 151—2 C. W. N. 513. See also 14 C. 1.

34. If a sale made under this Act be annulled by a final decree

Effects of annulment of of a Civil Court, application for the execution of such decree shall be made within six sales by decree of Court.

months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom.

And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

And if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

NOTES.

Scope.—This section applies merely to the case of an owner who has committed default in payment of the revenue of his property and who, subsequently, by a suit succeeds in setting aside the sale held under the Act, and who applied for and withdrawn the surplus money lodged in the Collectorate under such sale for his own benefit.—52 Ind. Cas. 692.

Recovery of possession.—Where a sale has been held when no arrears of revenue exists and the original owner sues to recover possession and obtains a decree, the decree is sufficient for the purposes of this section without a special declaration that the sale is annulled.—12 W. R. 276; 12 W. R. 311. On a sale being set aside the decree-holder of the defaulter who took the money is bound to refund the same.—11 C. 121.

Limitation.—This section refers to cases brought under s. 33 and the rule of limitation laid down in this section (requiring the decree-holder to apply for execution within six months of the decree) applies only to suits brought under s. 33.—19 C. W. N. 464=28 Ind. Cas. 876. But this period does not apply where a sale under the certificate procedure has been set aside.—2 C. W. N. 89.

35. In the event of a sale being annulled by a final decree of a Court of justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

Note.—Vide 7 C. W. N. 377.

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf, partly of himself, and partly of another person, though, by agreement, the name of the certified purchaser was used, shall be dismissed with costs.

NOTES.

Object.—The object of this section is to prevent the true owner from disputing the title of his benamadar (certified purchaser) and not to preclude a third party from enforcing a claim against the true owner in respect of the benamsee property.—12 C. 302. This section is final in character and must be construed strictly and literally and is no bar to a suit to oust an assignee of the certified purchaser of a revenue sale on the ground of fraud of the latter of which the former had notice. The legislature in enacting this section intended to give a certified purchaser in possession a statutory title against the person, if any, on

whose behalf he had purchased; and it cannot be held that death or assignment destroys the statutory title.—2 C. W. N. 433.

Permanently settled districts.—*Vide* 14 C. 440.

Suit against or by certified purchaser.—A certified auction-purchaser suing to recover possession of land from which he has been ousted, is not debarred from the benefit of this section, unless he has acknowledged himself to be a benameedar—5 W. R. 56; 10 W. R. 167. In the absence of proof to the contrary such auction-purchaser must be assumed to be the owner—15 W. R. 552. But when A purchased a mehal in the name of B's brother and obtained possession. He then sued B, who was acting as his tahsildar for an account and for delivery of certain paper connected with that mehal. *Held* that the terms of this section did not apply to bar the suit—21 C. 375. A benameedar in whose name a property has been purchased at a revenue sale and in whose name the certificate of sale has been issued is not entitled to maintain a suit for recovery of possession of lands comprised in the property—14 Ind. Cas. 10. This section bars a suit against a certified purchaser only and not against his representative.—11 Ind. Cas. 434; 2 C. W. N. 433; 3 C. W. N. 657; 5 C. W. N. 341—*see* also 26 All. 82 (F. B.). Where a suit is brought against the certified purchaser, who made a contract with the owner who never quitted actual possession to reconvey the property to him, *held* that the suit, not being one to oust the certified purchaser from possession, was not barred by this section—14 C. 583. *See* also 17 C. W. N. 75. A defaulting proprietor can also be a purchaser.—11 W. R. 265; 1 C. L. R. 565.

37. The purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar, and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:—

First—Istimrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly.—Tenures existing at the time of settlement, which have not been held at a fixed rent:

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.—Taluqdari and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly.—Leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk,

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years, but not otherwise:

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

NOTES.

Scope.—This section does not apply to the auction-purchaser of an estate not sold under this Act—1 W. R. 262. This section should be construed strictly and in favour of holder of incumbrances and under-tenures so as to prevent hardship as much as possible.—1 C. W. N. 314.

Purchaser.—Where a sale has been brought about by fraud and collusion by the defaulter and auction-purchaser in order to avoid incumbrance, the purchaser did not acquire the rights and privileges of a purchaser at sale for arrears of revenue, and that the sale had the same effect as a private alienation, because it was in substance, a transfer under pre-arranged conditions to a purchaser who was a party to the arrangement and that the tenure-holder is entitled to the declaration that the sale clothed the purchaser with the rights and privileges of a private purchaser and not with those of a purchaser at a revenue-sale.—7 Ind. Cas. 21—12 C. L. J. 336. The position of the purchaser of an estate at a revenue-sale, at any rate in respect of his relations with his tenant is not absolutely independent of that of the ex-proprietor—49 Ind. Cas. 959. The special authority given by this section to an auction-purchaser passes to his putneedar of a portion of the estate purchased by him—15 W. R. 481. So also an assignee or an heir of an auction purchaser of an entire estate can exercise the privileges under the provisions of s. 37 of the Act—10 C. W. N. 148; 22 W. R. 29; 10 C. W. N. 497; see also 12 C. L. J. 407—8 Ind. Cas. 786; 12 C. L. J. 579; 5 C. L. J. 264; 22 W. R. 29; 15 C. W. N. 706. The word "purchaser" does not mean the "certified purchaser" only and the certified purchaser is not the only person who can sue an incumbrancer for ejectment under that section.—15 C. W. N. 706—7 Ind. Cas. 849; see also 9 C. L. J. 119—35 C. 931.

Entire estate.—A purchaser of a fractional share does not acquire any such right.—20 W. R. 264; 23 W. R. 387; 12 C. L. J. 407.

Free from all incumbrances.—An auction-purchaser with a permanent title under this section acquires the estate free from any incumbrances accruing from the laches of former proprietors—15 W. R. 552; 22 W. R. 126. As to ~~suits to~~ void encumbrance against some co-sharer tenure-holders if bars suit—~~vide~~ 8 C. W. N. 54. To bring a case within the words of s. 37 three things must occur, there must be a sale (1) of an entire estate (2) in the permanently settled districts (3) for its own arrears—6 Bom. L. R. 754. The rights must be exercised by all the purchasers jointly—24 C. 334. The word "purchaser" in this section does not mean only "a certified purchaser or his heirs or assignees."

The real purchaser is a purchaser within the meaning of the section and is entitled to avoid encumbrance—23 Ind. Cas. 917. Patnidor purchasing zamindari at sale for arrears of revenue has no right to annul subordinate tenures.—18 C. W. N. 672.

An incumbrance or under-tenure is not *ipso facto* avoided by a sale of an estate for arrears of revenue, and is only liable to be avoided at the option of the purchaser at such sale, an option which may be exercised by the institution of a suit under this section within the time allowed by law or by actual ejectment by the Collector under s. 29—6 C. L. J. 472. An incumbrance can also be avoided by giving notice to vacate.—39 Ind. Cas. 273.

Settlement.—The word “settlement” in this section must be taken to mean the permanent settlement of the estate concerned, and not the year 1793 in which the greater portion of Bengal was permanently settled.—19 Ind. Cas. 872; 24 W. R. 476.

Under-tenures and under-raiyats.—The title of an auction-purchaser to avoid an under-tenure and eject a tenant depends on whether the tenure is protected under this section and whether the tenant has a right of occupancy—12 W. R. 123. The onus of proving that under-tenures in a talook sold at a sale for arrears of revenue fall under any of the exceptions to this section is on the person alleging the tenures to be within such exceptions—15 C. 555. Notwithstanding that a party may fail to show that his tenure comes within any of the first exceptions of this section, he is entitled to the benefit of the 4th exception in respect of any dwelling-houses or other permanent structures that may be upon his holding—3 C. 293. Where an auction-purchaser claims lakheraj property of the defendant the *onus* is on the plaintiff to show that it is his mal land.—14 Ind. Cas. 99; 14 Ind. Cas. 757.

Istimrari or mukarari tenures.—Portion of taluk existing at permanent settlement but transferred and held under different names, if protected—*vide* 15 C. W. N. 15; 19 C. W. N. 79. A *Mukarari* is not an encumbrance at all except for the purposes of the Bengal Land Revenue Sales Act.—43 Ind. Cas. 16.

Permanent settlement.—The word “permanent settlement” in the first exception mean the permanent settlement of 1793, and not the permanent settlement of any particular mehal.—5 P. L. J. 79—54 Ind. Cas. 658; 10 C. W. N. 503.

Dwelling-houses.—That a dwelling-house to be exempted under this section must be a dwelling-house of a permanent character and mere huts would not come within the description.—3 C. W. N. 212; 3 C. W. N. 341; 30 C. 498; 20 C. W. N. 1028—36 Ind. Cas. 184.

Gardens.—Whether there is a garden in the land so as to bring the case within exception 4 of this section is a question of fact. But the determination of the question whether there is a garden or not is dependent upon the several elements which should be taken into consideration, namely, *first*, the number of trees on the land, *secondly*, their relative situation; *thirdly*, their number in relation to the area covered by them; and *fourthly* the classes to which they belong—7 Ind. Cas. 912. The existence of a few trees scattered over the land does not comply with the requirements of the condition of the 4th exception to this section—7 Ind. Cas. 327. Leases of lands which may not have been expressly leased for the purpose of making gardens thereon, but on which gardens have subsequently been made, are under the provisions of this section protected from avoidance by an auction-purchaser.—12 C. 327, see also 23 W. R. 387; 23 C. W. N. 325—50 Ind. Cas. 407, see also 7 Ind. Cas. 912; 20 C. L. J. 494.

Tanks—A lease of tank without any portion of the surrounding land is not protected under clause (4) as it is not within the meaning of that clause a lease of land whereon a tank has been excavated—2 C. W. N. 412. That a right of occupancy could be acquired on the share of a tank and when acquired would be protected under this section—8 C. W. N. 192; 8 C. W. N. 601, see also 9 C. W. N. 852; 12 C. W. N. 1029. A tank existing from before the defendant's lease is not protected.—41 Ind. Cas. 1.

Raiyats holding at fixed rates— Raiyats holding at fixed rates are primarily the person referred to in the proviso to this section and the protection offered thereby has been extended under the Bengal Tenancy Act from these raiyats at fixed rates to all classes of occupancy raiyats—42 C. 745=20 C. W. N. 185=20 C. L. J. 223; see also 8 C. W. N. 751; 2 C. W. N. 229; 46 Ind. Cas. 254; 27 C. L. J. 293 (P. C.); 27 C. L. J. 284; 49 Ind. Cas. 959. A suit for assessment of rent under this section is maintainable in the Civil Court.—21 C. L. J. 637=30 Ind. Cas. 53.

38. The following rules for the registration of taluqdari and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates and of farms for terms of years so held, shall be observed.

Registration of certain tenures and farms.
Common and special registry.

39. There shall be two sets of registers, one for common registry and one for special registry.

Common registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government.

Special registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

NOTE.

The fact that a tenure is registered in the common registry under this section is not of itself *prima facie* evidence that such a tenure exists.—9 C. 116=12 C. L. R. 89.

40. The holder of any taluqdari or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by Application for registry. petition to the Collector of the district to which the estate belongs.

The application* shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

- (1) the pargana or parganas in which the tenure is situated;
- (2) the nature of the tenure;
- (3) the name or names of the village or villages whereof the land is composed, or wherein it is situated;
- (4) the area of the land comprised in the tenure with its boundaries in complete detail;
- (5) the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it;

* As to the time limited for applications under s. 40 for registry of tenures, and as to fees chargeable, see Ben. Act III. of 1862, ss. 2 and 3

- (6) the date of the deed constituting the tenure, or the date when the tenure was created;
- (7) the name of the proprietor who created the tenure;
- (8) the name of the original holder of the tenure;
- (9) the name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said section may apply in like manner for registry of the same.

The application shall contain such of the foregoing particulars as are applicable to farms.

41. When the application is for common registry, the Collector shall serve a notice on the record-
Procedure on application for common registry. ed proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the mal-kachahri of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

If within the limited time no objection is made, the Collector shall register the tenure or farm.

If within the limited time an objection is made by any record-
 ed proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall grant the application.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

42. When the application is for special registry, the Col-
Procedure on application for special registry. lector shall serve and issue the notices pre-
 scribed in the last preceding section.*

* As to the registration of rent-free tenures in the manner laid down in s. 42, see Ben. Act VIII. of 1876, s. 96.

If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application, otherwise the application shall be rejected.

If within the limited time any recorded proprietor, or any party interested not being a proprietor, object to the registry, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

43. Leases of lands of the description specified in the fourth
 Registration of leases of exceptional class in section 37 may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of taluqdari and other similar tenures.

44. Tenures of the first and second exceptional classes in
 Registration of old section 37 may be registered at the option of the holders, and when so registered shall be entered only in the special register.*

Application for such registry shall contain the particulars specified in section 40, so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41.

If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure, and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register, otherwise the application for registry shall be rejected.

If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Col-

* As to time limited for applications for registry of tenures and as to fees chargeable, see Ben. Act III. of 1862, ss. 2 and 3.

lector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time :

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of *bonâ-fide* tenures of the description herein referred to.

45. [*Time for application for registry of tenures and farms*].
—*Repealed by Ben. Act III. of 1862, s. 1.*

46. The actual expenses of any measurement, survey, or local enquiry made under sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm ; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

Civil Court not competent to order entry in special register. 47. No Civil Court shall be competent to order the Revenue-authorities to enter any tenure or farm in the special register :

Provided always that the refusal of the Revenue authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be

48. Subject to the general law of limitation any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

49. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue-authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue-authorities to whom they are subordinate, and from the Local Government ; and all orders passed under the sections aforesaid shall be open to appeal in usual course.

The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open at any time within one year from the date of registry to revision by the Board

of Revenue,* on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

50. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless, in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue, a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue :

Provided that a tenure or farm in the hands of a *bona-fide* purchaser for value shall not be avoided by reason of such fraud.

But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

51. Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section 42, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue-authorities upon such application be in favour of the claimant.

52. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect :

* Certain words here have been omitted by Act IV. of 1914.

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pargana, mouza, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

Note.—7 W. R. 318.

53. Excepting* sharers with whom the Collector, under sections 10 and 11 of this Act, has opened Rights of purchaser being sharer in estate; separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act, and likewise any purchaser and of purchaser of estate not sold for its own arrears. of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estates.

NOTES.

Scope.—This section does not prevent a proprietor or co sharer from purchasing—11 W. R. 265. The language and scope of this section are materially different from those of s. 54 of the Act; under the one section, the purchaser takes subject to all encumbrances existing at the time of sale, while under the other no encumbrances created after default is binding on the purchaser.—7 C. L. J. 1.

Distinction between this section and section 54.—There is a clear distinction between the rights acquired under this section and s. 54. Under this section the terms of the certificate given under Schedule A are limited, and a purchaser under that section acquires the estate subject to all encumbrances existing at the time of sale whether created before or after the default and even up to the date of sale but there is no such limitation to the terms of a certificate given to a purchaser under s. 54, and all encumbrances created after the date on which a purchase under that section takes effect, that is, after the date on which the default is committed are void—17 C. 148. Adverse possession is an encumbrance within the meaning of s. 53—22 C. 244. An estate does not become free from encumbrances by a mere sale, i. e., if the purchaser does not avoid them—8 C. W. N. 115. The expression "sharers" with whom the Collector has opened a separate account under ss. 10 and 11, in s. 53 of the Revenue Sale Law means sharers with whom the Collector has opened separate accounts acting in conformity with ss. 10 and 11.—14 C. L. J. 552. Adverse possession is an encum-

* Here certain words, repealed by Act XII. of 1891, Schedule I. have been omitted.

brance within the meaning of s. 53 and the proprietor of an estate who has lost some lands of his estate by adverse possession for the statutory period cannot by falling into arrears of revenue and purchasing the estate at the revenue sale get rid of such adverse possession.—43 Ind. Cas. 461.

As to meaning of the word proprietor, *vide* 8 C. N. 786=31 I. A. 176 (P. C.)

54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

NOTES.

Subject to all encumbrances.—The object of this section is to protect only *bona-fide* encumbrances and not encumbrances executed in contemplation of an impending sale or in *fraud* of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the encumbrance to establish its *bona-fide* character—5 W. R. 1. The lease of a share is protected under this section—7 W. R. 295. As regards mortgage lien *vide* 15 C. 546. An auction-purchaser acquires under this section the former proprietor's right to sue to resume and assess *lakheraj* land—W. R. Sp. 293; 25 W. R. 86. An auction-purchaser of a fractional share of an estate for which a separate account has been opened under s. 11 does not acquire it free of encumbrances under s. 37 but acquires it (according to s. 54) subject to all encumbrances and acquires no rights not possessed by the previous owner—26 W. R. 264. *See also* 23 W. R. 387; 18 W. R. 461. Where a share of an estate held by a Hindu widow was sold for arrears of revenue, it was contended that under this section, the estate acquired by the purchaser lasted only during the lifetime of the widow. *Held* that the purchaser did not take any interest limited to the life of the widow, but that the entire share passed by the sale—22 C. 641. *See also* 21 C. 105=21 I. A. 118. The purchase of a share of an estate does not amount to an encumbrance within the meaning of this section.—11 C. W. N. 821.

Where adverse possession is completed before or after the date of default, a purchaser at a revenue sale of a share of an estate in respect of which a separate account has been opened in the Collectorate becomes entitled to possession of the share. If the adverse possession was completed before default the default must be treated as the default of the person who has acquired title by adverse possession and the sale must be held to pass his interest, 12 C. W. N. 528 *see also* 22 C. 244. 13 C. W. N. 407=1 Ind. Cas. 81. But *see* 43 Ind. Cas. 61.

The purchaser under this section purchases the share, and not the right title and interest of the defaulter. 15 C. L. J. 436=16 C. W. N. 587. A purchaser of a share of an estate at a revenue sale under s. 13 does not acquire all the rights possessed by the previous owner or owners. 30 C. 1071. The purchaser of a share of an estate under this section takes the share subject to encumbrances, which were in existence on the date to which the title relates back (that is the day after that fixed for the last day of payment) and were in force on the date of the sale,—7 C. L. J. 387.

As to whether an attachment is an encumbrance *vide*, 14 C. W. N. 677=11 C. L. J. 528=6 Ind. Cas. 40. Sale for arrears of revenue under the Act, effect of, on mortgage created between date of default and date of sale—charge on sale proceeds *vide* 3 C. L. J. 52.—*See also* 16 C. W. N. 985.

55. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or raiyats shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

56. Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open kachahri or office for the time being by fine to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month: and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect:

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

57. A default to make good a bid by making the deposit required by section 22 of this Act shall be held to be a contempt.

58. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

NOTE.

Scope.—The power vested in the Collector by this section must be exercised with discretion. At a sale for arrears of revenue, the Collector began with a bid of Re. 1; the agent of the defaulter followed with a bid of Rs. 10; there was no other bidder, but, the Collector enquired whether any one was willing to increase the bid; as no one came forward, the Collector forthwith closed the bid and declared that he had purchased the property on account of the Government, at the bid of Rs. 10, under s. 58 of the Revenue Sale Law. *Held* that the procedure adopted by the Collector was not in accordance with the provision of s. 58 of the Act and the sale was accordingly set aside. 31 C. 1036=8 C. W. N. 880. The mere fact that at the sale of a revenue-paying estate under this Act, a peon of the Collector's cutchary opens the bidding with a bid of one rupee according to custom as matter of form, does not preclude the Collector from taking over the estate under the second portion of s. 58 of the Act.—46 Ind. Cas. 447=22 C. W. N. 769=28 C. L. J. 51 (F. B.).

59. [*Fees and charges demandable by Collector*].—*Repealed by Ben. Act III, of 1862, s. 1,*

60. The provisions of Regulation VII., 1822, and Regulation IX., 1825, shall be in force in every estate and IX., 1825, in force in in any part of which a measurement, survey, or local enquiry may be made under this Act, and in every estate purchased or taken on account of Government under this Act.

61. In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising, by the authority of Government, the powers of a Collector or Deputy Collector.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulations of that Presidency.

SCHEDULE A.

I certify that *A. B.*, has purchased, under Act No. XI. of 1859, the mahal [*or share a of mahal*] specified below, standing in the tauji of the district of _____, and that his purchase took effect on the _____ day of _____ [*being the day after that fixed for last day of payment*].

(Signed) *D. E.,*
Collector.

SPECIFICATION.

(If of an entire mahal.)

Tauji number
Name of mahal
Name of the former proprietor
Sadr jama

(If of a share of a mahal.)

Tauji number of the entire mahal
Name of the entire mahal
Sadr jama of the entire mahal
Description of the share sold
Subordinate tauji number of the share sold
Name of the former proprietor of the share sold
Sadr jama for which the share sold is separately liable

SCHEDULE B.*

* Schedule B. has been repealed by the Repealing and Amending Act I. of 1903.

ACT NO. XII. OF 1859.

The Calcutta Pilots Act, 1859.

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MAY 1859.

An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty.

WHEREAS it is expedient to amend the law for the trial of persons employed in the Pilot Service of Government at the Presidency of Fort William in Bengal when accused of breach of duty, and to extend the same to persons licensed to act as pilots at the said Presidency; It is enacted as follows :—

Preamble,

1. [*Repeal of Acts XXIV. of 1845 and I. of 1851*].—*Repealed by Act XIV. of 1870, s. 1.*

2. When any person employed in the Pilot Service of Government at the Presidency of Fort William in Bengal, or licensed to act as a pilot at the said Presidency, shall be accused of having committed any breach of duty while engaged in such service or acting under such license, and it shall appear to the "Port officer"* or to the Lieutenant-Governor of Bengal, that such person ought to be brought to trial for such breach of duty, such person shall be brought to trial upon a charge or charges framed by the said "Port officer,"* or such other person as the said Lieutenant-Governor shall direct, before a Court constituted under the provisions of this Act.

Appointment of Judge,

3. The Lieutenant-Governor of Bengal shall appoint a fit person to be Judge of the said Court.

Appointment of prosecutor.

4. The Lieutenant-Governor shall appoint such person as he may think proper to conduct the proceedings before the Court as prosecutor on the part of Government.

5. Every trial under this Act shall be held before the said Judge and a jury composed of two merchants of Calcutta, a master of a merchant-ship lying in the port of Calcutta, and a pilot of not less than twenty years' service.

Lists of merchants and pilots liable to serve on jury.

6. The Judge shall cause to be prepared and shall keep two separate lists, one containing the names of merchants, the other containing the names of pilots, liable to serve on such jury.

* The words within quotations have been substituted by Act IV. of 1914.

The names in each list shall be arranged in alphabetical order, and the place of abode and quality or business of each person named shall be stated.

7. When the Judge shall be about to hold a trial under this Act, he shall give notice to the prosecutor and to the party accused of a time and place to be fixed by the Judge for appointing a jury to serve at such trial.

Notice to prosecutor and accused of time and place for appointing jury

8. At the time and place mentioned in the notice, the Judge in the presence of the prosecutor and the person accused shall read over the names which first occur in each of the said lists of those merchants and pilots who, he has reason to believe, are present in Calcutta and capable of attending as jurors at the trial; and shall also propose the name of a master of a merchant-ship lying in the port of Calcutta, whom he deems qualified to serve on such jury.

Appointment of jury.

If no objection be made and allowed, the person so nominated shall be the jury to serve at the trial.

If the prosecutor or the party accused shall object to any of the persons named as jurors, he shall assign the grounds of his objection, and such objection shall forthwith be decided by the Judge.

If the objection be allowed, the Judge shall read from the said lists or propose (as the case may be) another name in the place of the one objected to, and the person so nominated shall serve on the jury, provided no objection to such person be made and allowed as aforesaid.

9. When a jury has been appointed under the last preceding section, the Judge shall fix a day for the trial, and shall summon, by writing under his hand, the persons so appointed to sit as a jury.

Day of trial to be fixed and summons to issue to jurors.

If any such person, when duly summoned, shall, without such excuse as the Judge shall allow to be sufficient, neglect or refuse to attend at the time appointed, or to remain in attendance, until the trial shall be completed, it shall be lawful for the said Judge to impose upon any such person a fine not exceeding two hundred rupees for every such default; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the defaulter under a warrant to be issued for that purpose by the Judge.

Penalty for non-attendance.

Such warrant may be transmitted by the Judge to any Magistrate of police for the town of Calcutta, and thereupon such Magistrate shall endorse the same, and shall cause it to be executed

in the same manner as if the warrant had been issued by such Magistrate.

10. If for any cause any of the persons summoned to attend Trial how to proceed if as jurors shall not be in attendance at the any juror does not attend. time fixed for the commencement of the trial, the trial may, with the consent of the prosecutor and the party accused, be held before the Judge and such jurors as shall be in attendance.

If such consent be not given, the place of the absent juror shall be supplied by some other person selected by the Judge from the same profession or calling as the person originally summoned, and who shall consent to serve, provided no objection to such person be made and allowed in manner aforesaid.

If the parties or either of them do not consent that the trial shall be held before the Judge and such jurors as may be in attendance, and the place of the absent juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day, and the Judge shall either resummon the same jury or appoint and summon another jury in the manner hereinbefore provided.

11. The Judge shall register in a book the names of all jurors Register of jurors who mentioned in either of the said two lists have served. who have attended and served on a trial held under this Act.

A juror who has served shall not be required again to serve, and his name shall be excluded in reading over the jury-lists until all the persons named in the said lists who are present in Calcutta, and capable of attending as jurors shall have served.

12. [*Jurors to be sworn*].—*Repealed by Act X. of 1873, s. 2.*

13. It shall be lawful for the Judge of the said Court, at the Judge may summon wit- instance of the prosecutor, or of the party nesses to attend at certain accused, or of his own motion, by writing time and place. under his hand, to summon any person to attend as a witness at a time and place to be specified in the summons, for the purpose of being examined at any trial before the said Court: or if such person shall be about to depart from Calcutta, so as to be unable to attend at such trial without serious inconvenience, then to be examined before the Judge of the said Court before the day fixed for the trial; provided always that due notice of the time and place of such examination shall be given to the accused party; provided also that such witness may nevertheless be examined at the trial if he shall be able to attend thereat, in which case his previous examination may also be read at the trial.

14. If any person who shall have been duly summoned to attend as a witness shall, without sufficient excuse, neglect or refuse to attend, or attending shall refuse to give evidence or to answer any question which may be lawfully put to him, such person shall forfeit and pay such fine, not exceeding five hundred rupees, as the Judge of the said Court shall order; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the person ordered to pay the same in the manner prescribed in section 9 of this Act.

15.* (1) Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

(2) Any person so authorized may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

(3) No person shall be detained under this section for more than forty-eight hours.

16. Upon the completion of the trial, the jurors shall give their verdict upon the charge, or, if there be more than one, upon each separate charge.

The verdict shall be according to the opinion of the majority of jurors. If the jurors are equally divided, the Judge shall declare his opinion, and the verdict shall be according to the opinion of the Judge and the jurors with whom he concurs.

17. If by such verdict the accused person is found guilty of the charge or of any one or more of the charges preferred against him, the Judge of the Court shall sentence him to be dismissed from the said pilot-service, or to have his license withdrawn, or shall award such other punishment, by loss of rank or pay, or by change of a license from a higher to a lower grade, or suspension from employment for a specified period, as to the Judge shall appear fit.

The Lieutenant-Governor of Bengal† may prepare a schedule of offences and punishments (such punishments being of the same nature as those here-

* S. 15 has been added by Act VI. of 1883, s. 1; the original s. 15 was repealed by Act X. of 1873, s. 2.

† Here certain words have been omitted by Act IV. of 1914.

inbefore mentioned) for the guidance of the said Court; and if such schedule be prepared* and the charge proved before the said Court is an offence specified in such schedule, the Judge of the said Court shall award such punishment as is prescribed for such offence in the said schedule, and no other.†

* Here certain words have been omitted by Act IV. of 1914.

† SCHEDULE OF OFFENCES AND PUNISHMENTS PREPARED IN ACCORDANCE WITH SECTION 17, ACT NO. XII. OF 1859.

Offences through Unskilfulness, Neglect &c., when in Pilotage-charge.

1. Any pilot who, when in pilotage-charge of any vessel shall, through unskilfulness, negligence, or other default, allow such vessel to ground, or cause injury, by collision or otherwise, to the vessel in his charge or to any other vessel, shall be punished by suspension or reduction of pay for a term not exceeding twelve months, or by a reduction either in steps or grade.

2. If in any case the loss of any vessel is the consequence of any of the offences above described, the pilot shall also be liable to dismissal.

3. Any pilot who shall unnecessarily cut or slip, or cause to be cut or slipped, any cable belonging to any vessel under his pilotage-charge, shall be punished by suspension or reduction of pay for a term which may extend to three months.

4. Any pilot who shall, either through unskilfulness, neglect, or other default, cause damage to any floating light-vessel, buoy, or beacon shall be punished by suspension or reduction of pay for a term which may extend to three months, and shall also be liable to make good the damage caused.

5. Any pilot who shall be asleep when in pilotage-charge of any vessel under weigh, or who shall fail to attend, whether by day or by night, to the swinging of the vessel of which he may be in pilotage charge, shall be punished with suspension or reduction of pay for a term not exceeding six months.

6. Any pilot who shall be drunk when in pilotage-charge of any vessel shall be punished by dismissal.

Offences against Discipline or Departmental Rules.

7. Any pilot who shall refuse to take pilotage-charge of a vessel when ordered to do so by competent authority, or who shall improperly throw up pilotage-charge of any vessel, or who shall quit the vessel of which he is in pilotage-charge without the consent of the master or commanding officer before the service for which he was engaged has been performed, shall be punished with suspension or reduction of pay for a period which may extend to twelve months, or by dismissal.

8. Any pilot who shall be drunk on board a pilot-vessel, or when on general duty (otherwise than in pilotage-charge), shall be punished with suspension or reduction of pay for a term which may extend to twelve months, and for any repetition of the offence shall be liable to dismissal.

9. Any pilot who shall be guilty of disobedience of orders shall be punished with suspension or reduction of pay for a term which may extend to twelve months, or by reduction in steps or grade, or by dismissal.

10. Any pilot who shall be found guilty of insubordination or disrespect to a superior officer shall be punished with suspension or reduction of pay for a term which may extend to six months.

11. Any pilot who shall assault his superior officer when on duty may be punished in addition to any penalty to which he may be liable under the Penal Code, by dismissal or by suspension or reduction of pay for a term not exceeding twelve months, or by reduction of grade.

12. Any pilot who shall, when in command of a pilot-vessel, neglect to attend to the proper maintenance, discipline, or navigation of such vessel, or any pilot who shall wilfully waste, destroy, or misapply public stores and property, shall be punished with suspension or reduction of pay for a term which may extend to twelve months, or by dismissal.

If by such verdict as aforesaid the accused person is found not guilty of the charge or charges preferred against him, the Judge shall declare him acquitted of the same.

18. The proceedings of the Court shall be sent by the Judge to the "Port officer"* for submission to the Lieutenant-Governor of Bengal; and no sentence of punishment pronounced by the Judge of the said Court shall be final until it has been approved of by the said Lieutenant-Governor.

The said Lieutenant-Governor may remit the whole or any part of such sentence, or may direct the substitution of any mitigated punishment in lieu of the punishment awarded by the said Court, as he shall think fit.

19. If it shall appear to the Judge of the said Court that the verdict of the jurors is manifestly contrary to the evidence, or that the trial is otherwise insufficient, the Judge, instead of passing sentence on the accused person, or declaring him acquitted, as the case may be, may certify the same to the Lieutenant-Governor of Bengal, and the said Lieutenant-Governor may either order a new trial before another jury, or acquit the accused person, as he shall think fit.

13. Any pilot who shall be guilty of any breach of rules duly promulgated by proper authority for his guidance as a pilot, and the punishment for which is not already laid down in this schedule, shall be punished with suspension or reduction of pay for a term not exceeding twelve months, or by reduction in steps or grade, or by dismissal.

Offences containing an Element of Moral Turpitude.

14. Any pilot who shall wilfully make a false report of the circumstances attending the grounding collision, injuring, or loss of any vessel, or of the stores of any vessel, or on any point connected with his duty as a pilot, or who shall make or cause to be made a false muster-roll or a false entry in the log-book of any pilot-vessel, or who shall wilfully neglect to make the proper entries in the log-book of such vessel when he is in duty bound to make them, shall be punished with suspension for a term not exceeding twelve months, or by dismissal.

15. Any pilot who shall commit, or connive at, any fraud, or offence against the laws relating to Customs or Exrise, or who shall knowingly connive at the escape of any person against whom there has issued a warrant of arrest, shall be punished with suspension for a term not exceeding twelve months, or by dismissal.

N. B.—Reduction of pay is never to exceed one-half of the monthly salary or earnings.

The reduction of pay of an officer of the pilot-service when undergoing any of the punishments for which reduction of pay is inflicted under this schedule shall be the half of his earnings for the period for which he is punished.†

* The words within quotations have been inserted by Act IV, of 1914.

† This last para. has been substituted.—See Government of Bengal, General (Marine) Department Letter No. 4316, dated Dec. 14, 1878.

20. It shall be lawful for the Lieutenant-Governor of Bengal to make such rules as he shall think proper, not inconsistent with the provisions of this Act, for conducting the proceedings and regulating the practice of the said Court.*

* RULES FOR THE COURT FOR THE TRIAL OF PILOTS UNDER ACT XII. OF 1859.

Rule 1.—Whenever it shall appear to the Lieutenant-Governor or the Superintendent of Marine that any person employed in the pilot-service of Government or any licensed pilot ought to be brought to trial under the provisions of the above-mentioned Act the Superintendent of Marine shall frame the charge or charges upon which such pilot is to be tried, and transmit a copy of the same to the Judge of the Court, who shall thereupon issue a notice, of not less than one day's duration, in the Form No. 1 appended, calling upon the prosecutor on behalf of Government under the said Act and the party accused to attend on him at a place and time appointed, for the purpose of appointing a jury under the 7th and 8th sections of the said Act.

Rule 2.—At the time and place appointed in the said notice, the Judge shall deliver to the prosecutor a copy of the charge or charges, and the accused shall be entitled to receive a copy thereof from the prosecutor on application.

Rule 3.—The jury having been appointed under the provisions of section 8 of the Act, the Judge shall, by a summons under his hand in Form No. 2, summon them to appear at a time and place to be fixed by him for the trial, and shall, by a summons in the Form No. 3, summon the accused to attend such trial; the time for such trial not being earlier than two days after the service of such summons. The summons, respectively shall be served either personally or by leaving the same at the place of business or of the last-known abode of the parties respectively.

Rule 4.—The course of proceedings at the trial shall be as follows or as near thereto as conveniently may be:—

The jury shall be sworn in the like manner as in the ordinary Courts of law.

The charge or charges shall then be read by the prosecutor. The defendant shall not be required to plead to such charge, or charges, but the evidence shall be taken on the subject thereof, as though he had pleaded not guilty. The prosecutor shall then call the witnesses for the prosecution, who may be cross-examined by the accused, and re-examined and examined by the Judge and jury, according to the course and practice of the Supreme Court. The case for the prosecution having been closed, the accused shall be called upon for his defence. If not ready, the Judge may at his discretion grant the accused an extension of time or postponement, as the case may be. The accused in his defence may call witnesses on his part and address the Court either orally or in writing, and either before or after the examination of his witnesses. The prosecutor shall be entitled to cross-examine every witness for the defence, and the accused to re-examine such witness. At the close of the case for the accused, the prosecutor may address the Court in reply, if witnesses shall have been called by the accused in support of his statement, but not otherwise, unless by special permission of the Judge. The jury shall forthwith at the close of the case consider and deliver their verdict. Subject to section 19 of the said Act, the Judge may either pass sentence immediately or reserve his sentence, which sentence he may afterwards pass subsequently to the discharge of the jury.

Rule 5.—The forms for swearing the jury and the witnesses shall be as near those in use in the Supreme Court as may be.

Rule 6.—The Judge shall be at liberty to adjourn the Court for any specified object to such times and places, and from time to time, as he shall think necessary or expedient, and shall notify every such adjournment verbally to the jury, the prosecutor, and the accused, and any witnesses who shall be at such time in attendance, all of which several persons shall thereupon attend at every such adjourned time and place as though they had been specially summoned thereto.

Rule 7.—The summons to witnesses shall be in the Form No. 4 or as near thereto as may be, and the same shall be served personally in all cases if practicable, and, if not, shall be left at the place of business or abode of the party to whom it shall be

21. Nothing contained in this Act shall be held to restrict

Marine-authorities or Government may pass orders upon charge of breach of duty where trial unnecessary.

the marine-authorities or the Government from passing such orders as may be deemed proper upon any charge of breach of duty preferred against any person employed in the said pilot-service, when it shall not be deemed necessary that such person should be brought to trial for such breach of duty under the provisions of this Act.

addressed or on board the ship to which he belongs with any person on duty on board; and the Judge shall, on the application of either the prosecutor or the accused before the trial (or during the same if he shall see fit), sign and issue summonses for such witnesses as they may respectively require, which summonses shall be served in the manner above required by the prosecutor or the accused, as the case may be.

Rule 8.—In case it shall be made to appear to the Judge on an application by either the prosecutor or the accused that any material and necessary witness on any charge is about to leave the port of Calcutta, he shall issue to the parties so applying to him a summons for the attendance of such witness at some place and at the earliest reasonable time to be fixed in the summons, and the Judge shall thereupon immediately issue and send to the address of the other of such parties a notice in the Form No. 5 inviting his attendance at any such time and place on the occasion of the examination of any such witness to cross-examine him. In case of the non-attendance of such party after such notice, the Judge shall, on its being made to appear satisfactorily to him that such notice has reached the place of business or abode of such party, proceed with such examination without his attendance.

Rule 9.—The accused shall be allowed the assistance of a friend or professional adviser in the conduct of his defence, and such friend or professional adviser may, with the consent of the Judge, address the Court on the trial in lieu of the accused, provided the latter be present. But the Judge shall not recognize any written application relative to the trial or other proceedings except directly from the accused himself, and in no trial or other proceedings in which the accused himself is absent, shall the agency of such friend or professional adviser be admitted or recognized, unless in the case of illness of the accused supported by medical certificate, when, on a written request by him to the Judge authorizing the appearance of any person on his behalf, the proceedings may be carried on in the presence of such person as though the accused were himself present.

Rule 10.—In cases of collision, where the pilots of both colliding vessels are brought to trial, there shall be one trial for both, or a separate trial for each, according as the Judge in his discretion may determine.

Rule 11.—In case the accused shall not appear at the trial, and shall not satisfy the Judge that he has a reasonable cause for not appearing, the Court shall be at liberty to proceed in his absence to hear and determine the charge preferred against him; and the Judge may pass sentence thereon in such and the same manner as he might have done in case the accused had appeared and been arraigned in person on the said charge. Provided that in case the accused shall present himself before the conclusion of the trial, he shall be at liberty to cross-examine such witnesses as still remain to be examined on the part of the prosecution, and to make his defence to the charge or charges preferred against him in the usual manner, but shall not be at liberty, except by leave of the Judge, to reopen any of the proceedings which shall have taken place in his absence.

Rule 12.—Any application on behalf of a person summoned on a jury or as a witness or a defendant on any trial, and seeking to be excused attendance on the ground of illness, must be supported by a medical certificate addressed to the Judge of the Court at the earliest opportunity.

*Rule 13.**—It shall be optional with the Judge to deliver a formal charge to the jury; but if he do deliver such charge, he shall record it, and forward the same to

* Rule 13 has been substituted by the Government of Bengal, General (Marine) Department Resolution, dated Dec. 10, 1878.

22. If any person licensed to act as a pilot when duly charged with breach of duty as aforesaid, shall refuse to submit himself to trial under the provisions of this Act, the license of such person shall be withdrawn, and he shall be incapable of being again licensed to act as a pilot at the said Presidency.

23. The provisions of this Act shall extend to all persons employed in the pilot-service at the said Presidency and borne on the rolls of the Government establishment, whether such persons receive fixed salaries, or are remunerated by a portion of the pilotage charged on the vessels piloted by them, or in any other manner, and to all persons licensed to act as pilots at the said Presidency.

Government with the record of the case. If no formal charge is delivered, the Judge shall sum up the facts of the case, and analyse the evidence bearing on them in a written judgment, which shall form part of the record for submission to Government. When the Judge differs from the jury, the grounds for his opinion must be fully and clearly stated. The jury or the Judge shall be at liberty to have recorded on the proceedings such remarks connected with, or arising out of, the case as they may desire to bring to the notice of the authorities.

Rule 14.—Questions of law or procedure not herein specially provided for shall be determined so far as is practicable and reasonable in accordance with the rules of the Supreme Court in regard to similar or analogous matters.

ACT NO. XIII, OF 1859.*

The Workman's Breach of Contract Act, 1859.

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MAY 1859.

An Act to provide for the punishment of breaches of contract by Artificers, Workmen, and Labourers in certain cases.

WHEREAS much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several Presidency-towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of artificers, workmen, and labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach

* Cf. 4 Geo. IV., c. 34.

Act XIII. of 1859 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh,
Lohardaga, and Manbhum,
and Pargana Dhalbhum, and
the Kolhan in the District of
Singbhum

Coorg	...	...	See <i>Gazette of India</i>	...	1881, Pt. I., p. 504.
	...	...	Ditto	...	1878, Pt. I., p. 747.

I. C. Act. 1859—12.

of contract should be subject to punishment; It is enacted as follows:—

1. (1)* When any artificer, workman, or labourer shall have received from any master or employer resident or carrying on business in any Presidency-town,† or from any person acting on behalf of such master or employer, an advance of money “not exceeding three hundred rupees”‡ on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen, or labourers, if such artificer, workman, or labourer shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform, or get performed, such work according to the terms of his contract, such master or employer, or any such person as aforesaid, may complain to a Magistrate of Police.§

“(2)* The Magistrate shall at once examine the complainant on oath and may thereupon dismiss the complaint if in his opinion there is no sufficient ground for proceeding.

(3)* If in the opinion of the Magistrate there is sufficient ground for proceeding, he shall issue a summons or warrant, as he may think proper, for bringing before him such artificer, workman or labourer, and shall hear and determine the case.”

NOTES.

Preamble.—Where the language of the enacting sections of a statute is clear, the terms of a preamble cannot be called in aid to restrict their operation or to cut them down. The purpose for which a preamble to a statute is framed is to indicate what in general terms was the object of the legislature in passing the Act, but it may well happen that these general terms will not indicate or cover all the mischief which the enacting portions of the Act itself is framed to be provided for. 11 A. 262=A. W. N. 1889. This Act being a penal Act must be construed strictly. An advance of money is an essential preliminary to the creation of an obligation under the Act.—6 Bom. L. R. 225—see also 1 Weir 693; 14 Bom. L. R. 956.

Scope.—This act applies only where there has been an advance of money on account of any work, which words do not include mere loans or old debts, and the language used shows plainly that the interference of the Magistrate is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse. As a rule a mere breach of contract ought not to be an offence, but only to be the subject of a civil action. This Act is, like chapter 19 of the Indian Penal Code is an exception. But the Magistrate has to use a judicial discretion and to consider whether any excuse averred is lawful and reasonable. And a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process, 16 B. 368. 1 Weir 686; 7 M. 131=1 Weir 685; 1 Weir 687; 12 Bom. L. R. 135; 21 Bom. L. R. 753. Supply of material is not advance. 1 Weir 692. The provision for payment of penalty

* The old section 1 has been numbered 1 (1) and sub-sections 2 and 3 have been added by Act XII. of 1920.

† Certain words, which were repealed by Act XVI. of 1874, have been omitted.

‡ Certain words within quotations have been added by Act XII. of 1920.

§ Certain words after this, which were repealed by Act XII. of 1920, have been omitted.

in the contract does not bar the operation of this Act. 1 Weir 674; 1 Weir 697; 1 Weir 692; 1 Weir 683. Supply of price of material is not also advance. 1 Weir 693; 6 M. H. C. App. 24=1 Weir 701. Where a contract is made in British India but where the work is to be done outside British India the Magistrate has no jurisdiction. 1 Weir 671; 10 M. 21. So also where the contract was entered into outside British India but the work is to be done in British India, the Court has no jurisdiction.—7 M. 354=1 Weir 672. *Vide* 15 Cr. L. J. 662; 20 Cr. L. J. 429.

An agreement by a person, in consideration of an advance of money, to collect coolies to work on a coffee-estate, and to pay penalty for every day's delay in supplying labour and to serve as a cooly for five years in the event of the contract not being fulfilled, was held to be an agreement within the scope of Act XIII. of 1859 (8 M. 379=1 Weir 67). A contract to get work performed also falls under this section. 3 M. H. C. App. 25=1 Weir 675; 1 Weir 677. In certain cases this Act is not applicable. *Vide* 1 Weir 681; 1 Weir 670; 1 Weir 692; 14 W. R. Cr. 29; 18 W. R. Cr. 53. This Act is not applicable where the work is already finished. 11 Cr. L. J. 414 8 P. R. 1917 Cr. This Act does not apply to contracts for agricultural work.—38 P. R. 1914 Cr.

Artificer labourer or workman.—A person who, in the ordinary course, would himself take part in the work he contracted for is an artificer, labourer or workman, within the scope of this section. Rat. Un. Cr. C. 204=Cr. Reg. 24-7-1884; 7 M. 100=1 Weir 690; 1 U. B. R. (1902-1903) Vol. I., 2. A cooly gang may be a workman or artificer under this Act. U. B. R. (1904) 1st gr. Workman's Breach of Contract Act I. This Act does not apply to private domestic servants. 1 Weir. 688; 12 W. R. Cr. 26=2 B. L. R. A. Cr. 32; 1 Weir. 689; 20 P. R. 1876 Cr. A clerk also does not come within the purview of this section. 1 Weir. 689. Nor is applicable to temple servants. 1 Weir. 689. A butcher contracting to supply skins does not come within the Act. 1 Weir. 690=7 M. H. C. App. 12. The words "artificer, workman or labourer," in s. 2 have reference to the occupations in which manual labour is the use of muscles and sinews, is an essential element, and this most if not exclusively so, in the connotation of "labourer," less so in "workman," which has the most extended signification of all and least so in "artificer," which connotes a special class of work requiring skill and power of contrivance. Further the word "artificer" has reference to industrial arts and not to the fine arts. 28 P. R. 1904 Cr. A cooly sirdar is not an artificer nor an actor of a theatrical company. A musician is not also included. 38 M. 551. 28 P. R. 1904; 6 C. L. R. 180=6 Cr. L. J. 191; 43 Ind. Cas. 787; 591. This Act does not also apply to a surety of workman. 1 Bom. L. R. 523. A sub-contractor is not a workman. 10 B. 96. A breach of contract to supply woods does not come within this section—4 B. L. R. App. 1=13 W. R. Cr. 4; Rat. Un. Cr. C. 537; 1 Weir. 691. A contractor or a commission agent although occasionally taking part in the work does not come within this Act. 2 Bom. L. R. 801. A cartman is also not included. 1 Weir 600; Rat. Un. Cr. C. 349=Cr. Reg. 39 of 1887; 28 P. R. 1908 Cr.=9 Cr. L. J. 107; 33 P. R. 1917 Cr. A carpenter-contractor or head carper is a workman. 15 Cr. L. J. 235, *see also* 15 Cr. L. J. 651; 17 Cr. L. J. 398. A dealer of stone is not an artificer.—19 Cr. L. J. 591.

An agreement to carry salt by boat is not a contract within this Act. 13 M. 351=1 Weir 691. A *muhant* is not an artificer. 8 C. L. R. 254. A labourer to do agricultural work does not come within this Act. 7 B. 379. A shoe-maker is included within the term. 9 Bom. L. R. 362=5 Cr. L. J. 337. This section deals with advances to individuals and not with advances to several persons jointly. 2 Bom. L. R. 545. In cases of several contracts each defendant should be proceeded against separately. 1 Weir 707. The Secretary of State cannot sue under this Act as he does not carry on business in a place where the Act extends. 3 L. B. R. 33 (F. B.) but *see* U. B. R. 1909 2d Gr. Workman's Breach of Contract I, where a government officer was held to be so.

Advance.—Loan is not advance, 4 Cr. L. J. 200; 1 Weir 680; 13 Bom. L. R. 548; 10 A. L. J. 468; 13 Cr. L. J. 580 (F. B.); 15 Cr. L. J. 384. Old debt is not advance. 9 B. H. C. 171; 1 Weir 680; 1 Weir 685; Rat. Unrep. Cr. C. 754; Cr. Reg. 18 of 1895; 9 P. R. 1910 Cr.; 1 Weir 681, 1 Weir 684; 3 A. 744=A. W. N. 1881, 50; 23 M. 203=1 Weir 687; 1 Weir 682. See also 1 Weir 684; 8 W. R. Cr. 69; 8 Ind. Cas. 123; 14 Cr. L. J. 400; 23 P. R. 1913 Cr.; 27 M. L. J. 616; 15 Cr. L. J. 603; 15 Cr. L. J. 383; 2 P. R. 1916 Cr.; 19 Cr. L. J. 240; 56 Ind. Cas. 850.

Where proceedings under this Act is trial.—Proceedings up to the order of repayment of the advance or the performance of the contract do not constitute a trial. 6 Bom. L. R. 255; 6 S. L. R. 165. An application under this section should not be summarily disposed of.—16 A. L. J. 715.

Who can institute a proceeding.—This Act can only be put in motion by an employer. 11 A. L. J. 117. A middle man is not an employer.—13 Cr. L. J. 853.

Issue of warrant.—A Magistrate is authorized to issue a warrant, 20 A. 124=A. W. N. (1897), 20; 20 M. 235. But a Magistrate should enquire into the fact and should satisfy himself that a good *prima facie* case is made out.—17 P. R. 1896 Cr.

Jurisdiction of Court.—Either the Court within whose local limits, a workman, labourer or an artificer resides, or the Court within whose local limits the refusal to perform his contract occurs has jurisdiction to hear the complaint. 17 P. R. 1896 Cr.; 13 P. W. R. 1910 Cr.; 4 M. H. C. App. 64; 11 Cr. L. J. 380. A Presidency Magistrate of Calcutta has jurisdiction in respect of a contract made in Calcutta, but not that the breach of which has taken place beyond his local jurisdiction. 25 C. 637. Whether the Magistrate has jurisdiction to try the case summarily, *vide* 11 A. 262; 1 Weir 694; 6 Bom. L. R. 255; 10 Bom. L. R. 1126=33 B. 25=8 Cr. L. J. 409; 2 L. B. R. 163. But see 1 Weir 696; 13 Cr. L. J. 134. This Act is not applicable where the contract is to be performed in foreign territory.—16 M. L. T. 303; 20 Cr. L. J. 576.

2.* (1) If it shall be proved to the satisfaction of the Magis-

trate that such artificer, workman or labourer has received money in advance, not exceeding three hundred rupees, from the complainant on account of any such work, and has wilfully and without lawful and reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate may in his discretion either order such artificer, workman or labourer to repay the money advanced, or such part thereof as may be just and proper, within such period and in such instalments, if any, as the Magistrate thinks fit, or order him to perform or get performed such work within such period not exceeding one year as the Magistrate may determine and otherwise according to the terms of the contract:

Provided that no such order shall be made—

- (a) unless the complaint was brought within three months of the neglect or refusal or
- (b) if it is proved that the complainant has on any previous occasion obtained an order under this sub-section against such artificer, workman or labourer.

* Section 2 has been substituted by Act XII, of 1920.

*Explanation:—*Where no time has been fixed for the performance of a contract, neglect may be presumed to have occurred on the expiry of such period as the Magistrate deems to be a reasonable time for the performance thereof.

(2) If such artificer, workman or labourer shall fail to comply with an order made under sub-section (1), the Magistrate may sentence him to imprisonment for a period not exceeding three months, or, if the order be for the repayment of a sum of money, for a period which may extend to three months or until repayment is made, whichever period is shorter :

Provided that, where any instalment has been ordered, no sentence of imprisonment exceeding one month shall be passed for default in payment of any one instalment, and the aggregate of such sentence shall not exceed three months.

(3) The Magistrate may, from time to time, extend the period for repayment of money advanced or for the performance of work, as the case may be, and may vary the instalments :

Provided that no order shall be made under this sub-section extending beyond one year from the date of the order under sub-section (1) the period within which the work is to be performed.

(4) No repayment of any money or order therefor shall deprive the complainant of any civil remedy whether for the recovery of any money advanced and remaining unpaid or otherwise, which he may have otherwise under this Act.

NOTES.

Scope.—This section empowers a Magistrate, at the option of the complainant, either to order that the money advanced to a labourer be repaid or that the work be performed. The section only applies when the work is uncompleted when the complaint is made. If the work has been completed when the complaint is made, the Magistrate has no jurisdiction under this section. In other words, an employer, by doing the work himself, or employing a third party to do it for him, loses his right to proceed under the section. In such a case, the employer's civil remedy is, of course, open to him, but he cannot avail himself of the penal enactment. 28 M. 37=1 Weir 671=2 Cr. L. J. 149. Under this section the Magistrate should ascertain from the complainant which of two orders, *vis.*, either to finish the work or to repay the advance, he desires, and should pass the order. The complainant has the option. 1 U. B. R. (1902-03) Work Br. Contract 1. A second conviction on the same Court is not allowed.—21 C. 262. This section clearly implies that, after the order is passed for repayment under the first part thereof, an interval should occur in order to see whether he should comply with it or not. The imposition of punishment without any such opportunity being afforded is illegal, in as much as no offence was committed at the time of the passing of the order.—35 C. 1036 Note=9 Cr. L. J. 188; 35 C. 1035; Rat. Un. Cr. C. 380; 4 B. H. C. R. Cr. 37; Rat. Unrep. Cr. C. 375; 1 Weir 701; 1 Weir 702; 1 Weir 70, 72; 5 M. 376=1 Weir 702; 1 Weir 703. Before passing an order the accused should be given an opportunity. 1 Weir 703. When an order for repayment of money advanced has not been complied with, the Magistrate in sentencing the accused to imprisonment for a certain term under this section should also specify that the imprisonment is to continue "until the amount ordered to be repaid be sooner repaid," 1 Weir 699; 18 Cr. L. J. 281. An order

to repay the advance is not absolutely illegal provided the Magistrate has passed the order in accordance with the option of the complainant. 1 Weir 699. *Vide* also 1 Weir 705; 1 Weir 706; 1 Weir 707; 1 Weir 706; 4 L. B. R. 270; 11 C. W. N. 247; 1 Weir 698; Rat. Un. Cr. C. 617; 4 C. W. N. 253; 4 M. H. C. App. 68; 8 M. 294=1 Weir 700; 1 Weir 707; 1 Weir 704; 1 Weir 705; 7 Cr. L. J. 359; 1 Weir 700; 6 Bom. L. R. 255—where it was held that the accused person cannot be asked to pay the court-fee on the complaint. *See* also Rat. Unrep. Cr. 534. Neither the accused is liable to pay the cost. Rat. Un. Cr. 625. By the imprisonment of the accused the plaintiff is not deprived of his remedy by a civil suit. 2 M. H. C. 427. This being a penal statute the law of limitation is not applicable. 11 M. 332; 16 M. 347=3 M. L. J. 180. Third parties are not liable under this Act. 1 Weir 694; 1 Weir 693. A Magistrate under this section cannot work to be performed after the expiry of the term fixed in the contract of the parties.—8 Ind. Cas. 163; 21 Cr. L. J. 827; 58 Ind. Cas. 827.

Appeal.—An order, directing the repayment of money advanced is appealable, for, although no sentence in the proper sense has been passed, yet it is open to the Magistrate, if default is made in the payment of the money, to pass a final sentence. 1 Weir 694. *See* also 7 M. H. C. App. 1 for certain. Against orders passed under s. 2 (1) part 1 (1) part 2 no appeal lies. 7 S. L. R. 80=15 Cr. L. J. 372. No appeal lies to the Sessions Judge from an order of the Magistrate under s. 2.—18 C. W. N. 1271=15 Cr. L. J. 697.

Fraud.—Fraud is not an essential element 11 A. 262=A. W. N. 1889, 85. —*See* also 36 C. 917.

Effect of dismissal for default.—For effect of dismissal for default *vide* 14 Cr. L. J. 404.

Order of imprisonment and order for performing work.—An order both to repay the advance made by the employer and to perform the work and to suffer imprisonment is illegal.—12 A. L. J. 678.

Cost.—There is no provision in the Workman's Breach of Contract Act for ordering payment of Costs.—18 Cr. L. J. 984.

Revision.—The High Court has power to revise an order made by a Magistrate under the first part of section 2 of the Workman's Breach of Contract Act directing either return of the advance or specific performance of the contract. The power of revision of the High Court under ss. 435 and 439 of the Criminal Procedure Code extends to all proceedings before any inferior Court situate within the local limits of its jurisdiction.—21 Bom. L. R. 277=20 Cr. L. J. 316.

2A.* The Magistrate may in his discretion refuse to make inequitable contracts not an order under section 2 where in his opinion the contract in respect of a breach of which the complaint has been made was substantially unfair.

2B.* (1) If in any proceedings under this Act the Magistrate is of opinion that the complaint was false or frivolous or vexatious complaints. to the knowledge of the complainant or was frivolous or vexatious, he may in his discretion call upon the complainant forthwith to show cause why he should not pay compensation to the person complained against.

(2) The Magistrate shall consider any cause which such complainant may show, and, if after so doing he is satisfied that the accusation was false to the knowledge of the complainant or was frivolous or vexatious, he may, for reasons to be recorded, direct

* Sections 2A and 2B have been added by Act XII of 1920.

that compensation not exceeding fifty rupees be paid by the complainant to the person complained against.

(3) Compensation for the payment of which an order is made under sub-section (2) shall be recoverable as if it were a fine, and the Magistrate may, by the order directing payment of the same, further order that in default of payment the complainant shall suffer simple imprisonment for a period which may extend to thirty days or until payment is made, whichever period is shorter.

3. When the Magistrate shall order any artificer, workman, or labourer to perform, or get performed, any work according to the terms of his contract, he may also, at the request of the complainant, require such artificer, workman, or labourer to enter into a recognizance, with sufficient security, for the due performance of the order; and, in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him "to imprisonment"* for a period not exceeding three months.

NOTE.

This section refers only to finding bail for compliance with an order directing an artificer, workman, or labourer to perform or cause to be performed the work for which he has contracted. An order therefore, directing a workman to enter into recognizances for the payment of the money advanced is illegal. 1 Weir 699. A proceeding under this section is not a criminal proceeding. 27 C. 131=4 C. W. N. 201. A workman agreeing to work for a fixed period in lieu of advance made to him by the proprietor is also liable under this section.—12 A. L. J. 152=15 Cr. L. J. 233.—See also 15 Cr. L. J. 423.

"4.† In this Act the word 'contract' shall extend to all contracts within the meaning of the Indian Contract Act, 1872:

Provided that nothing in this Act shall apply to contracts where, a period having been specified for performance, such period exceeds one year."

5. This Act may be extended by the Governor-General of India in Council or by the Executive Government of any Presidency or place to any place within the limits of their respective jurisdictions.‡ In the

* The words within quotations have been substituted by Act XII. of 1920.

† Section 4 has been substituted by Act XII. of 1920.

‡ Extended to the Punjab, July 13, 1859: to all Collectorates in the Bombay Presidency, *Bombay Government Gazette*, 1860, p. 594: to Sind, *ibid.*, Dec. 4, 1873, p. 1000: to the District of Nimar, *Calcutta Gazette*, 1862, p. 2980: to town and cantonment of Rangoon, by Notification, dated Dec. 30, 1865: to Pegu Division of Lower Burma, by Notification, dated July 13, 1861—see *Calcutta Gazette*, p. 2340: to Tenasserim Division of Lower Burma, by Notification, dated Oct. 14, 1861—see *Calcutta Gazette*, 1861, p. 2189: to Arakan Division of Lower Burma, by Notification, dated Jan. 25, 1864—see *Calcutta Gazette*, 1864, p. 45: to Jubbulpore and Saugor, by Notification, dated Aug. 16, 1859—see *Calcutta Gazette*, 1859, p. 1954: to the military cantonment and Zila of Puna—see *Bombay Government Gazette*, dated Sep. 8, 1859, Vol. II., p. 269.

event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers.

NOTES.

Scope.—The object of this section is not merely to enable employers resident or carrying on business in places in s. 1 to prosecute, at other places, persons who have received advances but to extend all the provisions of the Act to other places and to confer a remedy on employers, resident or carrying on business in such other places. 66 B. L. R. 1902 (F. B.). The Act applies to cases where money has been advanced by employers resident or carrying on business in the Punjab. It is not necessary that they should reside in any of the places specified in the first section.—11 P. R. 1902 Cr. (F. B.).

When this Act is extended to a certain place under the provisions of this section, a master or employer residing or carrying on business in the place, has the same rights as are conferred by the Act on masters or employers resident or carrying on business in any Presidency Town. 12 C. W. N. 869=8 Cr. L. J. 134=8 C. L. J. 312. Powers under this Act outside the Presidency towns, can only be exercised under this section by officers who have been specially appointed. Rat. Unrep. Cr. C. 701. Where this Act has been extended under this section to an area outside Presidency town, residence or carrying on business by the employer within that area confers a right to prefer the complaint to the nearest Magistrate empowered in that area.—17 Cr. L. J. 308.—See also 20 Cr. L. J. 731.

ACT NO. XX. OF 1859.

The Moplah Outrages Act, 1859.*

RECEIVED THE G.-G.'S ASSENT ON THE 31ST AUGUST 1859.

An Act for the suppression of outrages in the district of Malabar in the Presidency of Fort St George.†

WHEREAS, in the district of Malabar, in the Presidency of Fort St. George, murderous outrages have been frequently committed by persons of the class called Mappillas,‡ the offenders in such outrages intending therein to sacrifice their own lives; and the general law of the country is not adequate to suppress such outrages; It is enacted as follows:—

1. [*Repeal of Acts XXIII. of 1854 and V. of 1856*].—*Repealed by Act XIV. of 1870.*

2. It shall be lawful for the Governor in Council of Fort St. George, whenever he shall see fit, by a proclamation published in the *Fort St. George Gazette*, from time to time to declare

Power to declare whole or part of Malabar under Act.

* This short title has been added by Act XI. of 1910.

‡ Continued by Mad. Act VII. of 1869.

† "Mappilla, lit. the son (pilla) of his mother (ma), as sprung from the intercourse of foreign colonists who were persons unknown, with Malabar women."—WILKINSON.

the whole or any part or parts of the district of Malabar to be subject to the operation of all or any of the following provisions.

3. Any Mappilla who murders or attempts to murder any person, or who takes part in any outrage directed by Mappillas against any persons wherein murder is committed, or is attempted to be committed, or is likely to be committed; and any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same; or who, after having committed, or having been accessory to, any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him; or who shall join or assist, or incite or encourage other persons to join or assist, in such resistance; shall, on conviction thereof, be liable not only to the punishment provided by law for the offence of which he may be convicted, but also to the forfeiture of all his property, of whatever kind, to Government, by the sentence of the Court by which he is tried;

and whenever any person shall be killed in the act of committing any such offence as aforesaid, or being wounded and taken prisoner in the act of committing any such offence as aforesaid, shall afterwards die of his wounds, it shall be competent to the Court which would have had cognizance of the offence if the offender could have been brought to trial, to proceed, on the application of the Magistrate, to hold an inquest into the circumstances of the death of the offender; and on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, to adjudge that the whole of his property shall be forfeited to Government.

4. All immoveable property of the offender which shall be alienated after the passing of this Act, and before the commission of any offence specified in section 3, shall be forfeited in the same manner as if no such alienation had been made, unless the same shall have been made more than twelve months before the commission of the offence.

5. If any Mappilla shall be sentenced to death for any capital offence, punishable also with forfeiture of property under this Act, it shall be lawful for the Court by which such offender is convicted, by its sentence to direct the body of such offender to be burned or buried within the precincts of the jail, as it shall see fit; and in like manner, if any Mappilla shall be killed in the act of committing any such offence as aforesaid, or, having committed any such offence as aforesaid, shall be killed in resisting a lawful attempt to apprehend him, it shall be lawful for the Magistrate to cause the body of the

person so killed to be burned or buried within the precincts of the jail, as the said Magistrate shall see fit.

6. The Governor in Council shall have, with respect to the
Powers of Governor in Council as to confinement or trial. confinement or trial of any person charged with or suspected of an intention to commit any offence punishable under this Act, the powers which are vested in him by any law regarding the confinement or trial of persons charged with or suspected of State offences; and the provisions of any such law shall be applicable to all cases in which the Governor in Council shall proceed under the authority of this section.

7. The Magistrate of the district may cause any Mappilla or
Procedure for Magistrate in respect to suspected persons. other person against whom there are, in his judgment, grounds of proceeding under the last section to be apprehended, and, after such enquiry as he may think necessary, may detain such Mappilla or other person in safe custody, until he shall have received the orders of the Governor in Council, to whom, in all such cases, he shall report his proceedings without unnecessary delay.

8. If, with the previous consent of the Governor in Council,
Penalty for remaining or returning within forbidden limits. any person against whom the Governor in Council shall think fit to proceed under section 6, shall undertake, in consideration of the suspension of such proceedings, to depart within a specified period from within the limits of the Continent of India or of any part thereof, and shall, in breach of his said undertaking, and without the permission of the Governor in Council, remain or return within such limits, he shall be liable to be punished with imprisonment with or without hard labour for a period which may extend to seven years, or with fine, or both.

9. Whenever any such outrage as is specified in section 3 of
Levy of compensation or fine. this Act, the same being punishable under this Act, shall, after such proclamation as aforesaid, have been committed by any Mappilla or Mappillas, it shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize, from all the Mappillas within the amsham* or the several amshams to which the perpetrator or perpetrators, or any one of such perpetrators, of such outrages shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, and also within the amsham in which the outrage shall have been committed; and the said Magistrate shall assess the proportions in which the said sum shall be payable upon the several heads of families of Mappillas within such amsham or amshams, according to his judgment of

* *Skr. അംശം*, part, share.

their respective means; and the said Magistrate shall appropriate the sum so levied as follows, that is to say, in the first place, to the compensation of the parties aggrieved by such outrages, including therein compensation to the family of any person dying by any such outrage for the pecuniary loss occasioned or likely to be occasioned by such death; and, subject to such compensation, to the use of the Government.

10. Whenever any such outrage as is specified in section 3

Penalty on Mappilla inhabitants of amsham refusing to deliver up offender.

of this Act, the same being punishable under this Act, shall have been committed by any Mappilla or Mappillas, it shall be lawful for the Magistrate to call upon the Mappilla inhabitants of the amsham or amshams to which the perpetrator or perpetrators or any one of such perpetrators of such outrage shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, or wherein any such perpetrator shall, after the perpetration of any such outrage, be found, to deliver up such perpetrator or perpetrators, and on the failure of such Mappilla inhabitants to comply with such call so made upon them by the Magistrate, it shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy from such Mappilla inhabitants such sum of money as the Governor in Council shall authorize as prescribed in the last preceding section of this Act, and all sums so levied shall be appropriated in the manner prescribed in that section.

11. All fines and pecuniary liabilities incurred under this Act

Fines, &c., how levied.

may be levied by a Magistrate under summary process, in the same manner as the public revenue may be realized by a Collector; and no action shall lie in any Civil Court against the Magistrate in respect of any fine imposed or any assessment made under this Act, or in respect of the levy of any portion of such fine from the person or persons upon whom the same shall have been assessed

12. It shall be lawful for the Governor in Council, by such

Power to withdraw parts of Malabar from Act.

proclamation as aforesaid, from time to time to withdraw from the operation of the provisions of this Act any part or parts of the said district which he may previously have declared to be subject thereto; and in like manner, as occasion shall require, to subject the same part or parts again to the operation of such provisions, or of any of them.

13. [Duration of Act].—Repealed by Mad. Act VII. of 1869.

ACT NO. XXIV. OF 1859.*

The Madras District Police Act.†

RECEIVED THE G.-G.'S ASSENT ON THE 6TH SEPTEMBER, 1859.

An Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George.

WHEREAS it is expedient to make the police-force throughout the Madras Presidency a more efficient instrument at the disposal of the Magistrate for the prevention and detection of crime, and to re-organize the police-force and improve the condition of the village-police; It is enacted as follows:—

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say),—

Interpretation.
The word “Magistrate” shall include all persons, within their respective jurisdictions, exercising all or any of the powers of a Magistrate:

The word “subordinate,” as applied to police-functionaries, shall mean District Superintendents and their Assistants:

The word “police” shall include general and village-police, cuttoobadies,‡ kavilgars, and all other persons by whatever name known, who exercise any police-functions throughout the Madras Presidency:

The expression “general police district” shall embrace all districts to which the operation of this Act shall be extended:

The word “property” shall include any chattel, money, or valuable security:§

Words importing the masculine gender shall include females:

* Act XXIV. of 1859 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

Act XXIV. of 1859 has been extended to the taluqs of Bhadrachalam and Rakapili in the Godavari District, by Notification No. 1150, dated Oct. 3, 1879, published in the *Gazette of India*, Oct. 4, 1879, Pt. I., p. 630 and in the *Fort St. George Gazette*, Oct. 21, 1879, Pt. I., p. 722.

As to the application of Act XXIV. of 1859 to the police in the Town of Madras, see Mad. Act VIII. of 1867, ss. 2, 3, 4, and 8. Mad. Acts V. of 1865 and I. of 1885 are to be read with, and taken as part of, this Act. For further provisions, see Mad. Acts, I of 1881 (ss. 2 and 11) and III of 1882.

† This short title has been added by Act XI. of 1901.

‡ This probably means kattubadi-peons, who are paid for their services by grants of land at a quit-rent.

§ Certain words after this repealed by Act XVII. of 1914 have been omitted.

The word "person" shall include Company or Corporation :

The word "month" shall mean calendar month :

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.

Note.—1 Weir 632 ; 635 ; 342 ; 837.

2-3. [*Repeal and amendment of certain Acts : Jurisdiction of officers appointed under Mad. Reg. XI. of 1816*].—*Repealed by Act XIV. of 1870.*

4. The superintendence of the police throughout the general
Superintendence vested in Governor in Council police district shall vest in, and be exercised by, the Governor in Council, and, except as authorized by him under the provisions of this Act, no person, officer, or Court shall be empowered to appoint, supersede, or control any police-functionary, any Regulation, Act, or usage to the contrary notwithstanding.

5. The administration of the police throughout the general
Inspector General of Police, &c. police district shall be vested in an officer to be styled the Inspector-General of Police for the Presidency of Madras, and in such subordinates as to the Governor in Council shall seem fit, who shall from time to time be appointed by the Governor in Council, and may be removed by the same authority.*

6. All powers not inconsistent with the provisions of this Act,
Powers of police, &c. which up to the passing of this Act belonged by law to the existing police-authorities, shall be vested in the police-authorities appointed under this Act : Provided always that no police-functionary so appointed shall possess or exercise any judicial or revenue authority.

7. The Inspector-General of Police shall be appointed a Justice of the Peace; he shall also have the full powers of a Magistrate throughout the general police district, but shall exercise these powers subject to such orders as may from time to time be issued by the Governor in Council. The Governor in Council may vest any District Superintendent of Police with all or any of the powers of a Magistrate within such limits as he may deem proper ; but such Superintendent shall exercise the powers with which he shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension, and detention of offenders in order to their being brought before a Magistrate, and as far as may be necessary for the performance of the duties assigned to him by this Act.

* Certain words after this repealed by Act IV. of 1914 have been omitted.

8. The entire police-establishment of the Madras Presidency shall, for the purposes of this Act, be deemed to be one police-force,* and shall be formally enrolled, and shall consist of such number of officers and men, and shall be otherwise constituted in such manner, as shall be from time to time ordered by the Governor in Council "subject to the control"† of the Governor-General of India in Council.

9. The Inspector-General may, from time to time, subject to the approval of the Governor in Council, frame such orders and regulations as he shall deem expedient, relative to the general government and distribution of the force, the places of residence, the classification, rank, and particular service of the members thereof; their inspection, the description of arms, accoutrements, and other necessities to be furnished to them; to the collecting and communicating intelligence and information; and all such other orders and regulations relative to the said police-force as the said Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect, and for rendering such force efficient in the discharge of all its duties.

10. The appointment of all police-officers shall, under such rules as the Governor in Council shall from time to time sanction, rest with the Inspector-General of Police and the Deputy Superintendents, who may, under such rules as aforesaid, at any time dismiss, suspend, or fine, to any amount not exceeding one month's pay, any police-officer whom they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

11. Every person so appointed shall receive on his enrolment a certificate (A) under the seal of the Inspector-General, by virtue of which he shall be vested with the powers, functions, and privileges of a police-officer. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed, or otherwise removed from employment in the police-force, and shall thereupon be immediately surrendered to his superior officer, or other person empowered to receive it.

12. [*Police Superannuation Fund*].—*Repealed by Act XVI. of 1874.*

13. It shall be lawful for the Inspector-General of Police, or any District Superintendent, if they shall think fit, on the application of any person showing the necessity thereof, to depute

* As to the police-force employed in military cantonments, see Mad. Act I. of 1866, s. 12.

† The words under quotations have been substituted by Act IV. of 1914.

any additional number of police-officers to keep the peace at any place within the general police district, at the charge of the person making the application, but subject to the orders of the said Inspector-General or District Superintendent, and for such time as they shall think fit; provided always that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General or District Superintendent, to require that the officers so appointed shall be discontinued: such person shall be relieved from the charge of such additional force from the expiration of such notice.

14. Whenever any railway, canal, or other public work, shall be carried on, or be in operation, in any part of the country, and it shall appear to the Inspector-General that the appointment of an additional police force in such neighbourhood is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, it shall be lawful for the Inspector-General, with the consent of the Governor in Council, to direct the employment of such additional force, and to maintain the same so long as such necessity shall continue; and to make orders from time to time upon the treasurer or other officer having the control or custody of the funds of any Company carrying on such works, for the payment of the extra force so rendered necessary as aforesaid.

15. All moneys paid in respect of such additional force as is mentioned in the two last preceding sections shall be paid into a fund to be called the "general police fund," and shall be applied to the maintenance of the police-force under such orders as the Governor in Council may pass; and all sums of money payable under those sections shall be recoverable by suit in any competent Court, or by distress and sale of the goods of the defaulter under the warrant of a Magistrate.

16. When it shall appear that any tumult, riot, or outrage has taken place, or may be reasonably apprehended in any place, and that the ordinary officers appointed for preserving the peace are not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in such place, it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the public or village servants, or residents of the neighbourhood, as such police-officer may require to act as special police-officers for such time and in such manner as he shall deem necessary, and it shall be the duty of such Magistrate at once to comply with such applications.

17. Every special police-officer so appointed shall have the same powers, privileges, and protection, and be liable to all such duties and penalties, and be subordinate to the same authorities, as the ordinary officers of police.

18. If any person, being appointed a special police-officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for such neglect, refusal, or disobedience.

19. No police-officer shall be at liberty to resign his office, or withdraw himself from the duties thereof, unless expressly allowed to do so in writing by the District Superintendent, or unless he shall have given to his superior officer two months' notice in writing of his intention to do so. Nor shall any such police-officer engage in any employment or office whatever, other than his duties under this Act, unless expressly permitted to do so in writing under the seal of the Inspector-General.

20. From and after the passing of this Act, every person not being, or having ceased to be, a duly enrolled police-officer, who shall unlawfully assume any function or power belonging to the police; and who shall not forthwith deliver up his certificate, and all the clothing, accoutrements, and appointments, and other necessities which may have been supplied to him for the execution of his duty; or who shall have in his possession any distinctive article of the dress or appointment directed to be worn exclusively by the police-force, without being able to account satisfactorily for his possession thereof; or who shall put on the dress of any police-officer, or any dress designed to represent it, or to be taken for it; or who shall otherwise personate the character or act the part of any police-officer for any purpose whatever; shall, in addition to any other punishment to which he may be liable for any offence committed under the assumed character, be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or both.

21. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and shall have the powers of a police-officer in every part of the general police district. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences, and public nuisances; to preserve the peace; to apprehend dis-

orderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him.

Note.—*Vide* 17 M. 37.

22 to 43. [*Offences for which police-officers may arrest without warrant: procedure on arrest: rules regarding bail and recognisances: remands: power to enter drinking-shops, &c.: inspection of weights and measures: prohibition to receive complaints of petty offences: powers to inform and prosecute, &c.*].—*Repealed by Act XVII. of 1862.*

44. Every police-officer who shall be guilty of any violation of duty or wilful breach of any lawful orders and regulations not punishable under section 10 of this Act; or who shall cease to perform the duties of his office, without leave, or without having given two months' notice as provided by this enactment, or engage, without authority, in any employment other than his police-duty; or who shall maliciously and without probable cause prefer any false, vexatious, or frivolous charge or information against any individual; or who shall knowingly and wilfully and with evil intent, exceed his powers; or shall be guilty of any wilful and culpable neglect of duty, in not bringing any person who shall be in his custody without a warrant before a Magistrate as hereinbefore provided; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, not exceeding three months, or both.

NOTE.

Note.—This section is meant for punishment of departmental offences.—1 Weir 842. The trial should be before a Magistrate. 1 Weir 841. See also 29 M. 192; 1 Weir 840; 1 Weir 841; 17 M. 278; 7 M. H. C. App. 7; 6 M. H. C. App. 31; 1 Weir 838; 1 Weir 836; 1 Weir 837.

45. Any police-officer who shall, on any pretext, or under any circumstances, directly or indirectly, collect or receive any fee, gratuity, diet-money, allowance, or recompense, other than he may be duly authorized by the Inspector-General or other officer acting under his order to collect or receive, shall, on conviction before a Magistrate, be liable to a penalty not exceeding six months' pay, or to imprisonment, with or without hard labour, not exceeding six months, or both.

46. Any police-officer who shall, directly or indirectly, extort, exact, seek, or obtain any bribe or unauthorized reward or consideration, by any illegal

threat or pretence, or for doing, or omitting or delaying to do, any act which it may be his duty to do or to cause to be done, or for withholding or delaying any information which he is bound to afford or to communicate, or who shall attempt to commit any of the offences above said, or shall be guilty of cowardice, shall be liable, upon conviction before a Magistrate, to a fine not exceeding twelve months' pay, or to imprisonment, with or without hard labour, not exceeding twelve months, or both: Provided always

that nothing in the three last preceding sections shall be deemed to preclude the Magistrate from committing for trial any cases of this nature too serious for his cognizance.

NOTE.

It is an offence for any police constable to extort, exact, seek or obtain a bribe by means of illegal threat or pretence.—1 Weir 842; 1 Weir 844.

47. If any person shall assault or resist any police-officer in the execution of his duty, or shall aid or incite any other person so to do, or shall maliciously and without probable cause prefer any false or frivolous charge against any police-officer, such person shall, on conviction of such offence before any Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, not exceeding three months, or both.

48.* Any person who, within the limits of any town, or other place to which this section shall, by notification in the *Port St. George Gazette*, be specially extended by Government,† commits any of the following offences, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees,‡ or to imprisonment not exceeding eight days, and it shall be lawful for any police-officer to take into custody without warrant any person who within view commits any such offence:—

First.—Any person who shall slaughter any cattle or clean any carcase in the streets; any person riding or driving any cattle recklessly and furiously, or training or breaking any horse or other cattle on or near any public road, to the danger of the passers:

Second.—Any person who wantonly or cruelly abuses or tortures any animal:

* S. 48 may be extended to Military Cantonments.—See Mad. Act I. of 1866, s. 13. Mad. Act I. of 1885 should be read with, and taken as part of, this Act.

† As amended by Mad. Act I. of 1872, s. 1.

‡ As to the procedure in enforcing fines under this section, see Mad. Act V. of 1865.

Third.—Any person who shall keep any cattle, or conveyance of any kind, standing in any road or street longer than is required for loading or unloading, or for taking up or setting down passengers; or who shall leave any conveyance in such a manner as to cause inconvenience or danger to the public:

Obstructing passengers.
Exposing goods for sale on road.

Fourth.—Any person exposing goods for sale on the road so as to obstruct passengers:

Fifth.—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any pial, cowshed, stable, or the like within the bounds of any thoroughfare; or who causes any offensive matter to run from any house, factory, dung-heap, or the like into the street:

Throwing dirt into street.
Being found drunk in thoroughfare.

Sixth.—Any person found in any thoroughfare drunk and riotous or incapable of taking care of himself:

Seventh.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself in, or by the side of, or near, any public street or thoroughfare; or by bathing or washing in any tank or reservoir, not being a place set apart for that purpose:

Eighth.—Any person who neglects to fence in or duly to protect any well, tank, or other dangerous place or structure.

NOTE.

For definition of "town" vide 6 M. H. C. App. 34; see 13 M. 142; 15 M. 132; 3 M. H. C. App. 9; 5 M. H. C. App. 25; 5 M. H. C. App. 34; 7 M. H. C. App. 22; 1 Weir 845; 1 Weir 912; 4 M. 235; 9 M. 167.

49. The Superintendent and superior officers of police may, as occasion requires, direct the conduct of all assemblies and processions, in the public roads, streets, or thoroughfares; prescribe the routes by which, and the times at which, such processions may pass; keep order in the public roads, streets, thoroughfares, ghâts and landing-places, and all other places of public resort; and prevent obstructions on the occasion of such assemblies and processions, and in the neighbourhood of places of worship during the time of public worship, and in any case when the roads, streets, or thoroughfares, ghâts or landing places, may be thronged, or may be liable to be obstructed; they may also regulate the use of music in the streets on the occasion of native festivals and cere-

Regulation of public processions, &c., and of carriages and persons at places of public resort.

Regulation of use of music in streets.

monies, and may direct all crowds of twelve or more persons to disperse, when they have reason to apprehend any breach of the peace; and every person opposing or not obeying the orders so issued as aforesaid, or violating the conditions of such license, shall be liable to a fine not exceeding one hundred rupees :

Provided always that nothing in this section contained shall be deemed to interfere with the general control of the Magistrate over such matters.

Note.—3 M. L. J. 276.

50. In all cases of convictions under this Act, the Magistrate trying the case shall be restrained within the limits of his ordinary jurisdiction as to the amount of fine or imprisonment he may inflict: Provided always that such charges against police-officers above the rank of a private shall only be adjudicated on by European functionaries, and that village-watchers alone shall be liable to conviction by heads of villages.

Note.—1 Weir 846.

51. Nothing contained in this Act shall be construed to prevent any person from being prosecuted for any offence made punishable on conviction by this Act; or to prevent any person from being liable under any other law, Regulation, or Act to any other or higher penalty or punishment than is provided for such offence by this Act: Provided always that no person shall be punished twice for the same offence.

52.* All fines and penalties imposed, and all sums of money recoverable, under the authority of this Act, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant of the Magistrate.†

53. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given, shall be commenced within three months after the Act complained of shall have been committed, and, not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the Superintendent or other superior officer of the district in which the act was committed, one month at least before the com-

* See Mad. Act V. of 1865, s. 1.

† Certain words, repealed by Act XVI. of 1874, have been omitted.

mencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action, brought by or on behalf of the defendant; and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action:

Recovery by plaintiff.

Costs.

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

Bar to action.

Note.—1 Weir, 846; 5 M. H. C. 466; 1 Weir 848.

54. When any action, prosecution, or proceeding, shall be brought against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate; and such plea shall be proved by the production of the warrant directing the act and purporting to be signed by a Magistrate. And the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. And no proof of the signature of such official shall be necessary, unless the Court shall see reason to doubt its being genuine:

Plea that act was done under warrant.

Decree for defendant.

Proof of signature.

Provided always that any remedy which the party may have against the authority issuing such warrant shall remain entire.

Saving of remedy against issuer of warrant.

55. This Act shall take effect in any and every such district as the Governor in Council shall appoint by notification published in the official Gazette.

Operation of Act.

SCHEDULE.

[LAWS REPEALED AND AMENDED.]

[Repealed by Act XIV. of 1870.]

FORM A.

A. B. has been appointed a member of the police-force under Act XXIV. of 1859, and is vested with the powers, functions, and privileges of a police-officer.

ACT NO. IX. OF 1860.*

The Employers and Workmen (Disputes) Act, 1860.

RECEIVED THE G.-G.'s ASSENT ON THE 12TH MARCH, 1860.

An Act to make provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers.

WHEREAS it is expedient to make provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers; It is enacted as follows:—

1. It shall be lawful for the executive Government of any presidency or place within the British territories in India to invest any Magistrate or other officer exercising the powers of a Magistrate with power to inquire into and decide disputes on account of wages, hire of carriage, or the price of work, between any workmen employed in the construction of any railway, canal, or other public work, the construction of which is or shall be sanctioned by Parliament or by any such executive Government, and the person or persons by whom such workmen are employed.

2. Magistrates empowered to decide disputes under the preceding section shall have jurisdiction only in case the amount in dispute shall not exceed the sum of two hundred rupees.†

3. The executive Government shall fix, and may from time to time alter, the local limits of the jurisdiction of any Magistrate invested with jurisdiction under section 1 of this Act. A Magistrate so invested may hold a Court for the investigation of disputes of the nature described in the said section at any place within the local limits of his jurisdiction.

* Act IX. of 1860 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum. See *Gazette of India* ... 1881, Pt. I., p. 504.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

Act IX. of 1860 has been declared in force in the Santhal Parganas by Reg. (III. of 1872), s. 3; as amended by Reg. (III. of 1899), s. 3; in British Baluchistan by Reg. (I. of 1890), s. 3; in Upper Burmah (except Shan States) by Act (XIII. of 1898), s. 4.

† In some certain words regarding the limitation of suits, which were repealed by the Limitation Act (IX. of 1871), have been omitted. For limitation, see now Act IX. of 1908, Sch. II., art. 4.

4. The rules for the institution of suits as provided in the Procedure in investigation of disputes, Code of Civil Procedure* shall, as far as circumstances will allow, be followed in the investigation of disputes under the preceding sections, and the procedure adopted shall be that provided for cases in which the suit may be disposed of at the first hearing.

No appeal.

5. There shall be no appeal against any decision passed under this Act.

6. The Magistrate, having heard and decided the case, shall make an order for the payment of such sum of money (if any) as shall appear to him to be justly due; and if the person ordered to pay shall make default in the payment of such sum immediately or within such time as the Magistrate shall direct, the Magistrate shall issue his warrant to levy the money by distress and the sale of the goods and chattels of the defaulter.

Order for payment.

Distress.

7. If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter, or are liable to be distrained and sold as aforesaid, the same shall be determined in the manner provided by the said Act VIII. of 1859 for the determination of the like questions arising in the execution of decrees.

8. Any person who shall voluntarily engage for a stipulated period to work on any railway, canal, or other public work, the construction of which is or shall be sanctioned in the manner specified in section 1 of this Act, or to execute any specific work in connection with such public work, and who shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform the work so stipulated for, shall be liable, on conviction before a Magistrate, to a fine not exceeding twenty rupees.

The Magistrate may, at the request of the complainant or of any one authorized to act on his behalf, instead of fining such person, order him to perform or get performed the work according to the terms of his contract or engagement; and if he shall fail to comply with the order, the Magistrate may, upon proof to his satisfaction of such non-compliance, sentence such person to be imprisoned, with or without hard labour for any term not exceeding two months.

Power to order specific performance.

9. This Act shall take effect only in those districts or places to which it shall be extended by order of the Governor-General of India in Council, or of the executive Government of any Presidency or place.†

* See Act V. of 1908.

† It has been extended to the Panjab (May 9, 1860); to Nadiya, 24-Parganas, and Baraset—*Calcutta Gazette*, 1860, p. 1339; to the District of Nimar—*ib.*, 1862, p. 2980;

ACT NO. XXI. OF 1860.*

The Societies Registration Act, 1860.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MAY, 1860.

An Act for the Registration of Literary, Scientific, and Charitable Societies.

WHEREAS it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes; It is enacted as follows:—

Preamble.

1. Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the

and in the Bombay Presidency to the Districts of Ahmadnagar, Broach, Ahmadabad, Khandesh, Khaira, Puna, Sholapur, Surat, Tanna, by notifications dated respectively May, 2, 1860, March 13, 1861, Nov. 12, 1861, and to the province of Sindh by Bombay Notification, dated July 30, 1873.—See *Sindh Official Gazette*, Aug. 9, 1873, Pt. I., p. 101.

* Act XXI. of 1860 (with the exception of the first four sections) is based on 17 & 18 Vict. c. 112.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpaiguri ... See *Gazette of India* ... 1881, Pt. I., p. 74.

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum ...

Ditto ... 1881, Pt. I., p. 504.

The scheduled portion of the Mirzapur District ...

Ditto ... 1879, Pt. I., p. 383.

Jaunsar Bawar ...

Ditto ... 1879, Pt. I., p. 302.

The Districts of Hazara, Pashawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ...

Ditto ... 1886, Pt. I., p. 48.

The District of Silhat ...

Ditto ... 1879, Pt. I., p. 631.

The rest of Assam (except the North Lushai Hills) ...

Ditto ... 1897, Pt. I., p. 299.

It has been extended, under the same Act, to the following Scheduled Districts:—

Sindh ... See *Gazette of India* ... 1880, Pt. I., p. 67a.

Kumaon and Garhwal ... Ditto ... 1876, Pt. I., p. 606.

Ajmere and Merwara ... Ditto ... 1878, Pt. I., p. 380.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

Registrar of Joint-Stock Companies,* form themselves into a society under this Act.

Memorandum of association.

2. The memorandum of association shall contain the following things (that is to say)—

the name of the society:

the objects of the society:

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

3. Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act.

There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as the Governor-General of India in Council may from time to time direct; and all fees so paid shall be accounted for the Government.

Fees,

4. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society the annual general meeting of the society is held, or if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-Stock Companies, of the names, addresses, and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Annual list of managing body to be filed.

5. The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society. and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

Property of society how vested.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society,

Suits by and against societies.

* In s. 1, certain words referring to Act XIX. of 1857, which were repealed by Act XVI. of 1874, have been omitted. See now Act VI. of 1882, s. 255.

and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion; provided that it shall be competent for any person having a claim or demand against the society to sue the president or chairman, or principal secretary, or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

8. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

9. Whenever, by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

10. Any member who may be in arrear of a subscription which, according to the rules of the society, he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of property in the manner hereinbefore provided.

But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

11. Any member of the society who shall steal, purloin, or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence.

12. Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient; provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the

district in which the chief building of the society is situate, and the Court shall make such order in the matter as it shall deem requisite :

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose :

Assent required.

Provided that, whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government.

Government consent.

14. If, upon the dissolution of any society registered under this Act, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to, or distributed among, the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or in default thereof, by such Court as aforesaid; provided, however, that this clause shall not apply to any society of shareholders in the nature of a Joint-Stock Company.

Clause not to apply to Joint-Stock Companies.

NOTES.

The following amendments were made by the Society Registration Act, (Bom. Act II. of 1912) :—

“Whereas it is expedient to amend the Societies Registration Act (XXI. of 1860), in manner hereinafter appearing ;

And whereas the previous sanction of the Governor-General required by s. 5 of the Indian Councils Act (Act 55 and 56 Vict., c. 14) 1892, has been obtained for the passing of this Act ; It is hereby enacted as follows :—

Notwithstanding anything contained in s. 14 of the Societies Registration Act, 1860, hereinafter called “the said Act,” it shall be lawful for the members of any society dissolved under s. 13 of the said Act to determine by a majority of the votes of the members present personally or by proxy at the time of the dissolution of such society that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in s. 1 of the said Act.”

Amendment of section 14.

The above alterations were made by Bom. Act II. of 1912 and is applicable only within the territorial limits of the Bombay Presidency. To other parts of India it is not at all applicable.

15. For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations ; but in all proceedings

Member defined.

Disqualified members. under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

16. The governing body of the society shall be the governors, council, directors, committee, trustees, or other body to whom by the rules and regulations of the society, the management of its affairs is entrusted.

17. Any company or society established for a literary, scientific, or charitable purpose, and registered under Act XLIII. of 1850,* or any such society established and constituted previously to the passing of this Act, but not registered under the said Act XLIII. of 1850,* may at any time hereafter be registered as a society under this Act; subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for the purpose by the governing body.

In the case of a company or society registered under Act XLIII. of 1850,* the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

18. In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-Stock Companies† a memorandum showing the name of the society, the objects of the society, and the names, addresses, and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

19. Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document, or any part of any document, to be certified by the Registrar, on pay-

* Repealed by Act X. of 1866, s. 219.

† In s. 18 certain words referring to Act XIX. of 1857, which were repealed by Act XVI. of 1874, have been omitted. See now Act VI. of 1882, s. 255.

Certified copies, ment of two annas for every hundred words of such copy or extract; and such certified copy shall be *prima-facie* evidence of the matters therein contained in all legal proceedings whatever.

20. The following societies may be registered under this Act :
 To what societies Act applies. charitable societies, the military orphan funds or societies established at the several Presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums, and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

NOTE.

The religious society, which had for its object, the control and management of, and the protection of the property appertaining to, a certain public mosque, was a society which might legally be registered under the provisions of the Societies Registration Act, 1860.—A. W., N. 1906, 59=3 A. L. J. 124=28 A. 384. See also 41 P. R. 1897.

ACT NO. XXXIV. OF 1860.*

The Government Officers' Indemnity Act, 1860.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND AUGUST, 1860.

An Act to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances.

WHEREAS fines and penalties have been imposed and levied by officers of Government in respect of acts committed during the late disturbances; and whereas assessments and contributions have been made and collected for the reconstruction or repairs of public buildings destroyed or injured during the same period and for other purposes; and whereas it is expedient to indemnify all officers of Government

Preamble.

* This title has been given by the Indian Short Titles Act (XIV. of 1897). Act XXXIV. of 1860 has been declared, under the Scheduled Districts Act (XIV. of 1874) to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh,
 Lohardaga, and Manbhum and
 Pargana Dhalbhum, and the Kol-
 han in the District of Singhbhum... See *Gazette of India* ... 1881, Pt. I., p. 504.

The scheduled portion of the Mir-
 zapur District ... Ditto ... 1879, Pt. I., p. 383.
 Jaunsar Bawar ... Ditto ... 1879, Pt. I., p. 382.

It has been extended, under the same Act, to the North-Western Provinces Tarai,—
 See *Gazette of India*, 1876, Pt. I., p. 505.

and other persons acting under the authority of officers of Government from any penalties or proceedings to which they may have rendered themselves liable since the tenth day of May 1857 in respect of the said fines, penalties, assessments, and contributions, and of any other acts which may have been done by them, and which have been or shall be ratified by the Executive Government, and to confirm and make valid the levy of the said fines, penalties, assessments, and contributions, and the said acts; It is enacted as follows:—

1. All fines, penalties, assessments, and contributions imposed since the tenth day of May 1857 in respect of the destruction or injury of Government or other property, or on any other account connected with the late disturbances, by any officer of Government, or by any person acting under the authority of an officer of Government, shall be deemed to have been duly imposed and levied if the same shall have been levied in pursuance of an order of Government or shall have been or shall be ratified by the Executive Government; and all officers of Government and all persons acting under their authority are hereby indemnified and discharged from liability in respect of any such fines, penalties, assessments, and contributions, and levying the same, and no suit or proceeding shall be commenced or prosecuted in respect thereof:

Provided that nothing in this Act shall authorize the levy of any fine, penalty, assessment, or contribution not already levied.

Proviso.

2. All acts done since the tenth day of May 1857 in connection with the late disturbances by officers of Government, or by persons acting under their authority or otherwise, in pursuance of an order of Government, or which shall have been or shall be ratified.

Indemnity for certain acts done since 10th May 1857.

ACT NO. XLV. OF 1860.*

The Indian Penal Code.

RECEIVED THE G.-G.'S ASSENT ON THE 6TH OCTOBER, 1860.

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Preamble

* All offences under the Penal Code are to be enquired into and tried according to the provisions of the Criminal Procedure Code (Act V. of 1898).—See ss. 5 and 28 of Act V. of 1898.

1. This Act shall be called "The Indian Penal Code," and shall take effect . . . * throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, chapter 106,† entitled "An Act for the Better Government of India." ‡

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories. . . . §

The Penal Code is superseded by the Sindh Frontier Regulation (V. of 1872), s. 11, in so far as that Regulation is inconsistent with it.

As to offences which may be tried summarily, see ss. 260 and 261 of the Code of Criminal Procedure (Act V. of 1898).

The Penal Code has been applied to offences committed before the 1st January 1862—

(1) in the Punjab, by Act IV. of 1872, s. 39.

(2) in Ajmere-Merwara, by Reg. III. of 1877, s. 29.

The Code has been declared in force—

(1) in the Santhal Parganas, by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899:

(2) in the Arakan Hill District, by Reg. IX. of 1874, s. 3:

(3) in Upper Burma generally (except the Shan States) by Burma Laws Act (XIII. of 1898), s. 4 (1) and sch. I.:

(4) in British Baluchistan, by Reg. I. of 1890, s. 3:

(5) in Angul and the Khondmals, by Reg. I. of 1894, s. 3:

(6) in the Kachin Hill-tracts, as regards hill-tribes (with modifications), by Reg. I. of 1895, s. 3:

(7) in Chin Hills as regards hill-tribes (with modifications), by Reg. V. of 1896, s. 3:

(8) in the Chittagong Hill-tracts, by Reg. I. of 1900, s. 4.

The Code has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(1) the N.-W. P. Tarai Districts (see *Gazette of India*, 1876, Pt. I., p. 505); and

(2) the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504).

By notification under ss. 3 and 5A of the same Act, it has been declared in force in the Pargana of Manpur, in Central India (see *Gazette of India*, 1899, Pt. II., p. 419). It has been extended under s. 5 of the same Act, to the Lushai Hills (see Notification No. 923-P., *Gazette of India*, 1898, Pt. II., p. 345).

* In s. 1, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted.

† This Statute may now be cited as the Government of India Act, 1858.—See the Short Titles Act, 1859.

‡ In s. 1, the words, "except the Settlement of Prince of Wales's Island, Singapore, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted.

§ In s. 2, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted. As to offences in territorial waters, see the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., c. 73).

3. Any person liable, by any law passed by the Governor-General of India in Council to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Punishment of offences committed beyond, but which by law may be tried within, the territories.

4.* The provisions of this Code apply also to any offence committed by—

- (1) any Native Indian subject of Her Majesty in any place without and beyond British India ; †
- (2) any other British subject within the territories of any Native Prince or Chief in India ; †
- (3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India. †

Explanation.—In this section the word “offence” includes every act committed outside British India † which, if committed in British India, ‡ would be punishable under this Code.

Illustrations.

(a) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(b) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(c) C, a foreigner who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(d) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Stat. 3 and 4 William IV., chapter 85, † or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof ; or any of the

Certain laws not to be affected by this Act.

* S. 4 has been substituted for the original by the Indian Penal Code Amendment Act (IV. of 1898), s. 2.

† For definitions of “British India and” “India,” see the General Clauses Act (X. of 1897), s. 3 (7), (27).

‡ This Statute may now be cited as the Government of India Act, 1833.—See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

provisions of any Act* for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty, .
 † or of any special or local law. ‡

CHAPTER II.

GENERAL EXPLANATIONS.

6. Throughout this Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapters§ entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Definitions in the Code to be understood subject to exceptions.

Illustrations.

(a.) The sections in this Code, which contain definitions of offences do not express that a child under seven years of age cannot commit such offences but the definitions are to be understood subject to the general exception¶ which provides that nothing shall be an offence which is done by a child under seven years of age.

(b.) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception || which provides that 'nothing is an offence which is done by a person who is bound by law to do it.'

7. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

Sense of expression once explained.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Gender

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

Number.

* See now the Army Act (44 & 45 Vict., c. 58) as continued and amended by subsequent annual Army Acts.

† In s 5 the words, "or of the East India Company, or of any Act for the Government of the East India Company," repealed by the Repealing Act (XIV, of 1870), have here been omitted.

‡ A similar saving as to special and local laws was enacted in the Indian Penal Code Amendment Act (XXVII. of 1870). The amendments made by that Act have been embodied in this edition of the Penal Code.

§ See Ch. IV., *infra*.

¶ In s. 82, *infra*.

|| In s. 76, *infra*.

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Man."
"Woman."

11. The word "person" includes any company or association, or body of persons, whether incorporated or not.

"Person."

12. The word "public" includes any class of the public or any community.

"Public."

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Queen"

14. The words "servants of the Queen" denote all officers "Servants of the Queen," or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, chapter 106, * entitled "An Act for the Better Government of India," or by or under the authority of the Government of India or any Government.

15. The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, chapter 106, * entitled "An Act for the Better Government of India." . . . †

"British India"

16. The words "Government of India" denote the Governor-General of India in Council, or during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

"Government of India"

17. The word "Government"† denotes the person or persons authorized by law to administer executive government in any part of British India.

"Government"

18. The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Presidency"

* This Statute may now be cited as the Government of India Act, 1858—See the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

† In s. 15, the words, "except the Settlement of the Prince of Wales's Island, Singapore, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.

‡ But see s. 263A (4), *infra*.

“Judge”

19. The word “Judge” denotes not only every person who is officially designated as a Judge, but also every person—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a) A Collector exercising jurisdiction in a suit under Act X. of 1859* is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under Reg. VII., 1816,† of the Madras Code, to try and determine suits, is a Judge.

(d.) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

20. The words “Court of Justice” denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Reg. VII., 1816,† of the Madras Code, having power to try and determine suits, is a Court of Justice.

* Act X. of 1859 (an Act to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal) has been repealed in the Chutia Nagpur Division of Bengal (except as to the District of Manbhum and the Tributary Mahals) by the Chutia Nagpur Landlord and Tenant Procedure Act (Ben. Act I. of 1879), and in the rest of Bengal (except as to Calcutta, Orissa, and the Scheduled Districts) by the Bengal Tenancy Act (VIII. of 1885). It is now in force in the District of Manbhum, in the Darjeeling District, and in parts of the Jalpaiguri District in Bengal; and such parts of it as are not inconsistent with the portions of Act VII. of 1885, which have been extended to the Orissa Division, are in force in that division.

Act X. of 1859 has also been repealed in the North-Western Provinces (except as to certain Scheduled Districts) by the N. W. P. Rent Act (XVIII. of 1873), and in the Central Provinces by the Central Provinces Tenancy Act (IX. of 1883), which has been superseded by the Central Provinces Tenancy Act (XI. of 1898).

In the North-Western Provinces, for “Act X. of 1859,” the words and figures “the North-Western Provinces Rent Act, 1881,” have been substituted.—See the N.-W. P. Rent Act (XII. of 1881), s. 2.

† Mad. Reg. VII. of 1816 has been repealed by Madras Civil Courts Act (III. of 1873).

“Public servant.” **21.** The words “public servant”* denote a person falling under any of the descriptions hereinafter following, namely :—

First.—Every covenanted servant of the Queen ;

Second.—Every commissioned officer in the military or naval force of the Queen while serving under the Government of India or any Government ;

Thurd.—Every Judge ;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth.—Every jurymen, assessor, or member of a panchayat assisting a Court of Justice or public servant ;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice or by any other competent public authority ;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety; or convenience ;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to take any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty ;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to take any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make,

* Later Acts and Regulations declare various other functionaries to be public servants for the purposes of the Penal Code, *e. g.*, Examiner of the University of Allahabad by s. 18 (1) of the Allahabad University Act (XVIII. of 1887).

authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

*"Eleventh.**—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election."

Illustration.

A municipal commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servant, whether appointed by the Government or not.

Explanation. 2—Wherever the words "public servant" occur they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

"Explanation 3.†—The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election,"

22. The words "moveable property" are intended to include corporeal property of every description
"Moveable property." except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining it is not legally entitled.
"Wrongful gain."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.
"Wrongful loss."

A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.
*Gaining wrongfully ;
 losing wrongfully.*

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."
"Dishonestly."

* The words within quotations have been added by Act XXXIX of 1920.

† The words within quotations have been added by XXXIX of 1920.

"Fraudulently."

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

"Reason to believe."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

*Explanation 1**—It is not essential to counterfeiting that the imitation should be exact.

*Explanation 2**—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance, the letters, figures, or marks, are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

* These two explanations have been substituted for the original by the Metal Tokens Act (1. of 1869), s. 9.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as explained by mercantile usage is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "Valuable security."

31. The words "a will" denote any testamentary document.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Words referring to acts include illegal omission.

33. The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

"Act."
"Omission."

34.* When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Acts done by several persons in furtherance of common intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

* S. 34 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII, of 1870), s. 1.

- 36.** Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect, partly by an act, and partly by an omission, is the same offence.

Effect caused partly
by act and partly by
omission.

Illustration.

A intentionally cause Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

- 37.** When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing
one of several acts consti-
tuting an offence.

Illustrations.

(a.) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of his murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(b.) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c.) A, a jailor, has the charge of Z a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in
criminal act may be guilty
of different offences.

- 38.** Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

- 39.** A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which at the time of employing those means, he knew or had reason to believe to be likely to cause it.

"Voluntarily."

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet if he knew that he was likely to cause death, he has caused death voluntarily.

- 40.*** Except in the chapter and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV "chapter VA"† and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter‡ defined :

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for term of six months, or upwards, whether with or without fine.

- "Special law." **41.** A "special law" is a law applicable to a particular subject.

- "Local law." **42.** A "local law" is a law applicable only to a particular part of British India.

- 43.** The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action ; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

- "Injury." **44.** The word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.

- "Life." **45.** The word "life" denotes the life of a human being, unless the contrary appears from the context.

- "Death." **46.** The word "death" denotes the death of a human being, unless the contrary appears from the context.

- "Animal." **47.** The word "animal" denotes any living creature other than a human being.

* S. 40 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII. of 1870). s. 2. The figures, 64, 65, 66, and 71, in the second clause of s. 40, have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 1 ; and the figures 67 by the Indian Criminal Law Amendment Act (X. of 1886), s. 21 (1)

† In ss. 41 and 42.

‡ The words within quotations have been inserted by Act VIII of 1913.

“Vessel.”

48. The word “vessel” denotes any thing made for the conveyance by water of human beings or of property.

49. Wherever the word “year” or the word “month” is used it is to be understood that the year or the month is to be reckoned according to the British calendar.

“Year : ” “month.”

50. The word “section” denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

“Section.”

51. The word “oath” includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

“Oath ”

“Good faith ”

52. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

“Punishment”

53. The punishments to which offenders are liable under the provisions of this Code are—

First.—Death ;

Secondly.—Transportation ;

Thirdly.—Penal servitude ;

Forthly.—Imprisonment,* which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour ;

(2) Simple ;

Fifthly.—Forfeiture of property ;

Sixthly.—Fine.†

* This definition of “imprisonment” applies in the case of all Acts of the Governor-General in Council made after the 3rd January 1868, and of all Regulations made under the Government of India Act, 1870 (23 Vict., c. 3) after the 14th January 1887.—See the General Clauses Act (X. of 1897), ss. 3 (26) and 4 (1) and (2)

† For power to pass sentence of fine in a case referred to a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to punishment of whipping generally, see the Whipping Act (VI. of 1864) ; in Upper Burma, see the Burma Laws Act (XIII. of 1898), s. 3 (b) and Sch. III. ; and in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss 8, 14 (2).

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person, being a European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provision of Act XXIV. of 1855 :

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.*

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

* This proviso has been added by the Indian Penal Code Amendment Act (XXVII. of 1870). s. 3.

60.* In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture would become the property of A. The estate becomes the property of Government.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

63.† Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.*

Amount of fine.

* As to the application of s 60 and ss. 63 to 74 to sentences passed in a Punj b Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

† The provisions of ss. 63 to 70 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law, contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

64.* In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment ;

Sentence of imprisonment for non-payment of fine.

“and in every case of an offence punishable *with imprisonment or fine, or with fine only*, in which the offender is sentenced to a fine;”

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.†

65.* The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence if the offence be punishable with imprisonment as well as fine.†

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable

66.* The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.†

Description of imprisonment for non-payment of fine.

67.* If the offence be punishable with fine only, “the imprisonment which the Court imposes in default of payment of the fine shall be simple, and” the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, *for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.*†

* The provisions of ss. 64, 65, 66, and 67 apply to all fines imposed under the authority of any Act, Regulation, Rule, or bye-law, unless the Act, Regulation, Rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

† As to the application of ss. 64, 65, 66, and 67 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (3), 52.

68.* The imprisonment which is imposed in default of payment of a fine shall terminate when-
 Imprisonment to termi- ment of a fine shall terminate when-
 nate on payment of fine. ever that fine is either paid or levied
 by process of law.†

69.* If, before the expiration of the term of imprisonment fixed in default of payment, such a
 Termination of im- proportion of the fine be paid or levi-
 prisonment on payment of ed that the term of imprisonment suffer-
 proportional part of fine. ed in default of payment is not
 less than proportional to the part of
 the fine still unpaid, the imprisonment shall terminate.†

Illustrations.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months or at any later time while A continues in imprisonment, A will be immediately discharged.

As to the application of ss. 64, 65, 66, and 67 to offences under special or local laws, see s. 40, *supra*.

In s. 64, the first two clauses quoted (except the words italicized) have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 2, for the words, "In every case in which an offender is sentenced to fine." They do not apply in the case of hill-tribes to which the Kachin Hill-tribes Regulation (1. of 1895) is applied.—See ss. (3) and 3 of that Regulation.

In s. 64 the words italicized have been inserted by the Indian Criminal Law Amendment Act (VIII. of 1882), s. 3.

In s. 67 the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 3.

In the case of hill-tribes to which the Kachin Hill-tribes Regulation (1. of 1895) is applied, the following words have been substituted for the portion italicized in s. 67 :—

"For any term not exceeding four months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding eight months when the amount shall not exceed one hundred rupees, and for any term not exceeding twelve months in any other case"—See the Kachin Hill-tribes Regulation (1. of 1895), ss. 1 (3) and 3.

This substitution is also made in the case of the hill-tribes to which the Chin Hills Regulation (V. of 1896) is applied.—See Regulation V. of 1896, s. 3 and schedule.

* The provisions of ss. 68, 69, and 70 apply to all fines imposed under the authority of any Act, Regulation, or bye-law, unless the Act, Regulation, Rule, or bye-law, contains an express provision to the contrary—See the General Causes Act (X. of 1897), s. 25.

† As to the application of ss. 68, 69, 70, and 71 to sentences passed in Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

As to the application of s. 71 to offences under special or local laws, see s. 40. *supra*.

Separable offences, which come within the provisions of s. 71, are not "distinct offences" within the meaning of s. 35 of the Code of Criminal Procedure (Act V. of 1898).

In s. 71, the clauses quoted have been added by the Indian Penal Code Amendment Act (VIII. of 1882), s. 4.

70.* The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would after his death, be legally liable for his debts.†

71.† Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Illustrations.

(a.) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b.) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

* The provisions of ss 68 69, and 70 apply to all fines imposed under the authority of any Act, Regulation, or bye law, unless the Act, Regulation, Rule or bye-law, contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25

† As to the Application of ss. 68. 69, 70, and 71 to sentences passed in Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

In s. 71, the clauses quoted have been added by the Indian Penal Code Amendment Act (VIII. of 1882), s. 4.

As to the application of s. 71 to offences under special or local laws, see s. 40, *supra*.

Separable offences, which come within the provisions of s. 71, are not "distinct offences" within the meaning of s. 35 of the Code of Criminal Procedure (Act V. of 1898).

72.* In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of those offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one of several offences the judgment stating that it is doubtful of which.

73.* Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say :—

Solitary confinement.

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months, and “shall not exceed one”† year ;

a time not exceeding three months if the term of imprisonment shall exceed one year.

74.* In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods ; and when the imprisonment awarded shall exceed three months, the solitary confinement awarded shall not exceed seven days, in any one month, of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Limit of solitary confinement.

75. Whoever, having been convicted, —

§ (a) by a Court in British, of an offence punishable, under Chapter XII. or Chapter XVII. of this Code, with imprisonment of either description for a term of three years or upwards, or,

* As to the application of ss. 72, 73, and 74 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

† In s. 73, the words quoted have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 5, for the words “be less than a.”

§ This section has been substituted for the old section 75 by Act III of 1910.

(b) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor-General in Council, or of any Local Government, of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term. shall be subject, for every such subsequent offence, to transportation for life, or to imprisonment of either description for a term which may extend to ten years.*

CHAPTER IV.†

GENERAL EXPLANATIONS.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

76. Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it.

Illustrations.

(a) A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry believing Z to be Y, arrests Z. A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act of Judge when acting judicially.

* In its application to hill-tribes to which the Kachin hill-tribes Regulation (I. of 1895) is applied [see ss. 1 (3) and 3 of that Regulation], the Code is to be read as if the following additional section were inserted—

“75 A. Notwithstanding anything in this Code, or in any other enactment for the time being in force, a person convicted of any offence punishable under this Code or under any other enactment shall be punishable with fine in lieu of, or in addition to, any other punishment to which he may be liable.”

In the Chin Hills the Code is to be read as if a section similar to the preceding, save a few verbal differences, and similarly numbered, were inserted.—See the Chin Hills Regulation (V. of 1896).

† Ch. IV. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 24A, and 302A.—See the Indian Penal Code Amendment Act XXVII. of 1870, s. 13, as amended by the Repealing and Amending Act (XII. of 1891). As to the application of Chapter IV, to offences under special or local laws, see s. 40, *supra*.

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done pursuant to the judgment or order of Court.

79. Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified by law

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Accident in doing a lawful act.

Illustration.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable, and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustration.

(a) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel; and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Nothing is an offence* which is done by a child under seven years of age.

Act of a child under seven years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a child, above 7 and under 12, of immature understanding.

84. Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge, or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

* See, however, the Indian Railways Act (IX. of 1890), s. 130, as to offences committed by children against certain provisions of that Act.

intoxicated, unless the thing, which intoxicated him, was administered to him without his knowledge, or against his will.

87.* Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who

Act not intended, and not known to be likely, to cause death or grievous hurt, done by consent.

has given consent, whether express, or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

88.† Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit§ it is done in good faith,

Act not intended to cause death done by consent in good faith for person's benefit.

and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

89.† Nothing, which is done in good faith for the benefit§

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

of a person under twelve years of age or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person :

* For exception to s. 87, see s. 91, *infra*.

† For exception to ss. 88 and 89, see s. 91 *infra*.

§ Pecuniary benefit is not "benefit" within the meaning of this section.—See s. 92 (expl.) *infra*.

Provisos

Provided—

Firstly.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

Secondly.—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly.—That this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or,

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. The exceptions in sections 87, and 88, and 89, do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it

Act done in good faith
for benefit of a person
without consent.

may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent,

or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit :

Proviso.

Provided—

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death ;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt ;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b.) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c.) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending in good faith, the child's benefit. A has committed no offence.

(d.) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Communication made in good faith.

Illustration.

A, a surgeon in good faith, communicates to a patient his opinion that he can not live. The patient dies in consequence of the shock. A has committed no offence though he knew it to be likely that the communication might cause the patient's death.

94. Except murder and offences against the state, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Act to which a person is compelled by threats.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do any thing that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith compelled to take his tools, and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Act causing slight harm.

Of the Right of Private Defence.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

Right of private defence
of the body and of property.

First.—His own body, and the body of any other person, against any offence affecting the human body ;

Secondly.—The property, whether moveable or immoveable of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication, of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Right of private defence
against the act of a person
of unsound mind, &c.

Illustrations.

(a) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b.) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception,

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Acts against which there
is no right of private defence.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

The right of private defence in no case extends to the inflict-
 Extent to which the right ing of more harm than it is necessary
 may be exercised. to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against act done, or attempted to be done by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

100. The right of private defence of the body extends, under
 When the right of private the restrictions mentioned in the last
 defence of the body extends preceding section, to the voluntary
 to causing death. causing of death, or of any other harm,
 to the assailant, if the offence which occasions the exercise of
 the right be of any of the descriptions hereinafter enumerated,
 namely :—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly.—An assault with the intention of committing rape ;

Fourthly.—An assault with the intention of gratifying unnatural lust ;

Fifthly.—An assault with the intention of kidnapping or abducting ;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding section,
 When such right extends to causing any harm other than death, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrong-doer, if the offence, committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

First.—Robbery ;

Secondly.—House-breaking by night ;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent, or vessel, is used as a human dwelling, or as a place for the custody of property ;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property, or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

Illustration.

A is attacked by a mob who attempts to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so doing, he harms any of the children.

CHAPTER V.*

(OF ABETMENT.)

Abetment of a thing.

107. A person abets the doing of a thing who—

First.—Instigates any person to do that thing; or,

* Ch. V. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A, and 304A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

The definition of “abet” here given applies in the case of all Acts of the Governor-General in Council and Regulations under ‘the Government of India Act, 1870’ (33 Vict., c 3), s. 1, made after the 14th January 1887.—See the General Clauses Act (X. of 1897), ss. 3 (1), 4 (2).

As to the application of ss. 109, 110, 112, 114 to 117, to offences under special or local laws, see s. 40, *supra*.

The abetment of certain offences is compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), Sec. 11.

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public-officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the legal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is necessary that the person abetted should be capable by law of committing an offence, or that he

should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is, therefore, subject to the punishment of death.

(c) A, instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigate B to take property belonging to Z out of Z's possession. A includes B to believe that the property belongs to A. B takes the property out of Z's possession in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4—The abetment of an offence being an offence the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A consents with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has, therefore, committed the offence defined in this section, and is liable to the punishment for murder.

108A.* A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Abetment in British India of offences outside it

Illustration.

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

109.† Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison, and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110.† Whoever abets the commission of an offence shall if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed, if the act had been done with the intention or knowledge of the abettor, and with no other.

Punishment of abetment if person abetted does act with different intention from that of abettor.

* S. 108A has been added by the Indian Penal Code Amendment Act (IV. of 1898), s. 3. As to the authority for instituting prosecutions under s. 108A, see the new Code of Criminal Procedure (Act V of 1898), s. 196.

† As to the application of ss. 109 and 110 to offences under special or local laws see s. 40, *supra*.

111. When an act is abetted, and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it :
 Liability of abettor when one act abetted and different act done.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.
 Proviso.

Illustrations.

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, the child was acting under the influence of A's instigation, and the act done was, under the circumstances, a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft ; for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if the murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112.* If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.
 Abettor when liable to cumulative punishment for act abetted, and act done.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences ; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in
 Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

* As to the application of ss. 112, 114 and 115 to offences under special or local laws, see s. 40, *supra*.

the same manner, and to the same extent, as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114.* Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115.* Whoever abets the commission of an offence punishable with death or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116.† Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may ex-

* As to the application of ss. 112, 114 and 115 to offences under special or local laws, see s. 40. *supra*.

† As to the application of ss. 116 and 117 to offences under special or local laws, see s. 40 *supra*.

tend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both ;

and, if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence or with both.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117.* Whoever abets the commission of any offence by the

Abetting commission of an offence by the public or by more than ten persons.

public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard, instigating a sect, consisting of more than ten members, to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this section.

Concealing design to commit offence punishable with death or transportation for life—

118. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or make any representation which he knows to be false respecting such design,

* As to the application of ss. 116 and to 117 offences under special or local laws, see s. 40 *supra*.

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years ; or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years ; and in either case shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section,

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, which it is his duty as such public servant to prevent,

Public servant concealing design to commit offence which it is his duty to prevent—

voluntarily conceals, by Act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment or with such fine as is provided for that offence, or with both ;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If offence be not committed,

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and, knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, conceals the existence of B's design, and is liable to punishment according to provision of the section.

Concealing design to commit offence punishable with imprisonment—

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

CHAPTER V.A.

CRIMINAL CONSPIRACY.

120A.* When two or more persons agree to do or come to be done,—

Definition of criminal conspiracy. (1) an illegal act, or
(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Punishment of criminal conspiracy. **120B.*** (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

* Chapter V.A. has been inserted by Act VIII, of 1913.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence, punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

CHAPTER VI.*

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death or transportation for life, and shall forfeit all his property.

Waging or attempting to wage war, or abetting waging of war, against the Queen.

Illustrations.

(a) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

121A.† Whoever, within or without British India, conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Conspiracy to commit offences punishable by section 121.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

* All persons are bound to give information of offences punishable under ss. 121 to 126 (inclusive) and s. 130 of this chapter.—See the new Code of Criminal Procedure (Act V. of 1898), s. 44.

As to authority for instituting prosecutions under Ch. VI. (except s. 127) see the new Code of Criminal Procedure (Act V. of 1898), s. 196.

† S. 121A has been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 4, Chs. IV., V., and XXIII. of this Code apply to offences punishable under s. 121A.—See Act XXVII. of 1870 s. 13.

122. Whoever collects men, arms, or ammunition, or other-

Collecting arms, &c.,
with the intention of waging
war against the
Queen.

wise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten

years, and shall forfeit all his property.

123. Whoever, by any act or by any illegal omission, con-

Concealing with intent
to facilitate design to wage
war

ceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such

war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or

Assaulting Governor-General,
Governor, &c., with
intent to compel or restrain
the exercise of any lawful
power.

the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful

powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

124A.* Whoever, by words, either spoken or written, or by

Sedition.

signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards,

Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any

* S. 124A has been substituted by the Indian Penal Code Amendment Act (IV. of 1898), s. 4, for the original s. 124A as inserted in the Indian Penal Code Amendment Act (XXVII of 1870), s. 5. Chs. IV. and V. of this Code apply to offences punishable under s. 124A. See Act XXVII. of 1870, s. 13.

shorter term, to which fine may be added, or with imprisonment which may extend to three years to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.*

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.*

127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of the property so received.

* See also the Foreign Enlistment Act, 1870 (33 & 34 Vict., c. 90) which applies to the whole of Her Majesty's dominions.

128. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.*

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* Also the Indian Marine Service—See s. 138A, *infra*.

*Explanation.**—In the section the words “officer” and “soldier” include any person subject to the Articles of War† for the better government of Her Majesty’s army, or to the Articles of War contained in Act No. V. of 1869.

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Whoever abets an assault by an officer, soldier, or sailor, in the army or navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen, or any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Whoever abets the desertion of any officer, soldier, or sailor in the army or navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Whoever, except as hereinafter excepted, knowing, or having reason to believe, that an officer, soldier, or sailor in the army or navy of the Queen has deserted, harbours such

* In s. 131, the explanation has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 6

† See now the Army Act, 1881 (44 & 45 Vict., c. 58), as continued and amended by subsequent annual Army Acts.

officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant-vessel on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Deserter concealed on board merchant-vessel through negligence of master.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the army or navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by soldier or sailor.

138A* The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the navy of the Queen.

Application of foregoing sections to the Indian Marine Service.

139. No person subject to any Articles of War for the army or navy of the Queen, or for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Persons subject to Articles of War.

140. Whoever, not being a soldier in the military or naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Wearing garb or carrying token used by soldier.

* S. 138A has been inserted by the Indian Marine Act (XIV. of 1887), s. 79.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an 'unlawful assembly,' if the common object of the persons composing that assembly is—

Unlawful assembly

Firstly—To overawe, by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant ; or,

Second.—To resist the execution of any law or any legal process ; or,

Third.—To commit any mischief or criminal trespass, or other offence ; or,

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or,

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly, an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Being member of unlawful assembly.

* As to duty to give information of offences punishable under s. 143, 144, 145, 147, or 148, see the new Code of Criminal Procedure (Act V. of 1898), ss. 41 and 45.

In s. 141 the word offence has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine—Secs. 40, *supra*

As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to dispersion of unlawful assemblies, see the new Code Criminal Procedure (Act V. of 1893), Ch. IX.

143.* Whoever is a member of an unlawful assembly shall be punished, with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Punishment.

144.* Whoever, being armed with any deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Joining unlawful assembly armed with deadly weapon.

145.* Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting.

147.† Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

148.† Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.†

Rioting, armed with deadly weapon.

* As to the duty to give information of offences punishable under ss 143, 144, and 145, see the new Code of Criminal Procedure (Act V of 1898), ss. 44 and 45.

† As to the duty to give information of an offence punishable under s. 147 or 148, see the new Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

‡ As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or

Every member of unlawful assembly guilty of offence committed in prosecution of common object

such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person, who, at the time of the committing of

of that offence, is a member of the same assembly, is guilty of that offence.

150. Whoever hires, or engages, or employs, or promotes, or connives at the hiring, engagement,

Hiring, or conniving at hiring, of persons to join unlawful assembly.

or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for

any offence which may be committed by any such person, as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs, or attempts to obstruct, any public

Assaulting or obstructing public servant when suppressing riot, &c.

servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or

threatens, or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any

Wantonly giving provocation, with intent to cause riot—

person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be com-

mitted in consequence of such provocation, be punished with	imprisonment of either description for
if rioting be committed :	a term which may extend to one year,
	or with fine, or with both ; and if the of-
fence of rioting be not committed, with imprisonment of either	description for a term which may ex-
if not committed.	tend to six months, or with fine, or with
	both.

153A.^{*} Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feeling of enmity or hatred between different classes of Her Majesty's subjects.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees ;

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

and do not in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the events of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or

Liability of person for whose benefit a riot is committed.

* S 153A has been inserted by the Indian Penal Code Amendment Act (IV. of 1898), s. 6. As to authority for instituting prosecutions under s. 153A, see the new Code of Criminal Procedure (Act V. of 1898), s. 196.

in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of agent of owner or occupier for whose benefit a riot is committed.

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Harbouring persons hired for an unlawful assembly.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or attempt to do any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both;

Being hired to take part in an unlawful assembly or riot;

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of of-

or to go armed.

fence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Affray.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees, or with both.

Punishment for committing affray.

CHAPTER IX.*

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do any official act, or for showing, or forbearing to show, in the exercise of this official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant taking gratification other than legal remuneration in respect of an official act.

Explanations.—"Expecting to be a public servant."—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

* As to authority for institution of prosecutions against certain public servants, see the the new Code of Criminal Procedure (Act V, of 1898), s. 197.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government* which he serves to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(a) A, a munsiff, obtains, from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of Resident of the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in the section.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act or in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, "or with any member of the Senate of the Allahabad Uni-

Taking gratification in order, by corrupt or illegal means, to influence public servant.

* In the definition of "legal remuneration" the word Government* includes—

- (1) a Court of Wards for the purposes of s. 12 (2) of the Central Provinces Government Wards Act (XVII, of 1885) :
- (2) the Senate of the Allahabad University for the purpose of s. 18 (1) of the Allahabad University Act (XVIII of 1887) :
- (3) any employer of a railway-servant as for the purposes of s. 137 (1) of the Indian Railways Act (IX, of 1890).

versity,"* or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, "or with any member of the Senate of the Allahabad University,"† or with any public servant as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Taking gratification for exercise of personal influence with public servant.

Illustrations.

An advocate who receives a fee for arguing a case before a Judge ; a person who receives pay for arranging and correcting a memorial addressed to Government setting forth the services and claims of the memorialist ; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust, are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of offences defined in section 162 or 163.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

* In s. 162 the words quoted have been inserted by the Allahabad University Act (XVIII, of 1887) s. 18 (2).

† In s. 163 the words quoted have been inserted by the Allahabad University Act (XVIII of 1887), s. 18 (2).

Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in, or related to, the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying law with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing an incorrect document with intent to cause injury.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully engaging in trade.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bids for certain property, purchases or bids for that property, either in his own name, or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Public servant unlawfully buying or bidding for property.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Personating a public servant.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, which may extend to two hundred rupees, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

CHAPTER IXA.'

OF OFFENCES RELATING TO ELECTIONS.

171A. For the purpose of this chapter—

Candidate **Electoral** (a) "Candidate" means a person
right defined. who has been nominated as a candi-
 date at any election and includes a
 person who, when an election is in con-
 templation, holds himself out as a prospective candidate
 thereat; provided that he is subsequently nominated as a
 candidate at such election ;

(b) "Electoral right" means the right of a person to stand
 or not to stand as, or to withdraw from being, a candidate or
 to vote or refrain from voting at an election.

171B. (1) Whoever—

Bribery. (i) gives a gratification to any per-
 son with the object of inducing him or
 any other person to exercise any electo-
 ral right or of rewarding any person for having exercised any
 such right : or

(ii) accepts either for himself or
 for any other person any gratification as a reward for exercising
 any such right or for inducing or attempting to induce any
 other person to exercise any such right,

commits the offence of bribery.

Provided that a declaration of public policy or a promise
 of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or
 attempts to procure a gratification shall be deemed to give a
 gratification.

(3) A person who obtains or agrees to accept or at-
 tempts to obtain a gratification shall be deemed to accept a
 gratification and a person who accepts a gratification as a
 motive for doing what he does not intend to do, or as a
 reward for doing what he has not done, shall be deemed
 to have accepted this gratification as a reward.

* This chapter has been added by Act XXXIX of 1920.

171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provision of sub-section (1)

whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of subsection (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this section.

171D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name;

and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both :

Provided that bribery by treating shall be punished with fine only.

Explanation.—‘Treating’ means that form of bribery where the gratification consists in food, drink, entertainment or provision.

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for undue influence or personation at an election.

171G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

False statement in connection with an election.

171H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate shall be punished with fine which may extend to five hundred rupees.

Illegal payments in connection with an election.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate he shall be deemed to have incurred such expenses with the authority of the candidate.

171I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts for expenses incurred at, or in connection with, an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

Failure to keep election accounts.

CHAPTER X.*

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172.† Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

173.† Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice, or order,

or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both ;

* As to the application of ss. 176, 177, and 187 of this Chapter to offences under special or local laws see s. 40 *supra*.

As to procedure in case of offences described in ss. 175, 178, 179, and 180, see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency-Small Cause Courts Act (XV. of 1882), Ch. XII.

† As to the authority for instituting prosecutions under ss. 172, 173 and 174, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

or, if the summons, notice, order, or proclamation, is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174.* Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant, legally competent, as such public servant, to issue the same,

Non-attendance in obedience to an order from public servant.

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, order, or proclamation, is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(a.) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b.) A, being legally bound to appear before a Zillah Judge, as a witness, in obedience to summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

175.† Whoever, being legally bound to produce or deliver or deliver up any document to any public servant as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

Omission to produce document to public servant by person legally bound to produce it.

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which

* As to authority for instituting prosecutions under ss. 172, 173, and 174, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

† As to procedure in case of offences described in ss. 175, 178, 179, and 180 see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

176.† Whoever being legally bound to give any notice, or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both ;

or, if the notice or information required to be given respects the commission of an offence,† or is required for the purpose of preventing the commission of an offence,† or in order to the apprehension of an offender,† with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177.† Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence,† or is required for the purpose of preventing the commission of an offence,† or in order to the apprehension of an offender,† with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

† In ss. 176 and 177, the word offence has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

As to authority for instituting prosecutions under ss. 176 and 177, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

† As to meaning of "offence" and "offender," see s. 177, explanation, *infra*.

Illustrations.

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7, Reg. I.I. 1, 1921,* of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.†—In section 176 and in this section the word “offence” includes any Act committed at any place out of British India, which, if committed in British India would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.

178.† Whoever refuses to bind himself by an oath “or affirmation” to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.||

Refusing oath or affirmation when duly required by public servant to make it.

179.† Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.||

Refusing to answer public servant authorized to question.

180.† Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement.

Refusing to sign statement.

* Ben. Reg. III. of 1921 has been repealed by Act XVII of 1962. See now s. 45 of the new Code of Criminal Procedure (Act V of 1998).

† This explanation has been added by the Indian Criminal Laws Amendment Act (III of 1894), s. 5.

‡ As to authority for instituting prosecutions under ss. 178, 179, and 180, see the new Code of Criminal Procedure (Act V. of 1998), s. 195 (1) (a).

In s. 178, the words quoted have been inserted by the Indian Oaths Act (X. of 1873), s. 15.

|| As to procedure in case of offences described in ss. 178, 179, and 180, see the new Code of Criminal Procedure (Act V. of 1998), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

ment, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.*

181.† Whoever, being legally bound by an oath "or affirmation"‡ to state the truth on any subject to any public servant or other person authorized by law to administer such oath "or affirmation,"† makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.

182.† Whoever, gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.§

Illustrations.

(a) A informs a Magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises attended with annoyance to Z. A has committed the offence defined in this section.

* As to procedure in case of offences described in s. 180, see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1892), Ch. XII.

† As to authority for instituting prosecutions under ss. 181, 182, and 183 see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (7) (a).

‡ In s. 181, the words quoted have been inserted by the Indian Oaths Act (X. of 1878), s. 15.

§ S. 182 has been substituted for the original by the Indian Criminal Laws Amendment Act (III. of 1895), s. 1.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that, in consequence of this information, the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

183.* Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Resistance to the taking of property by lawful authority of public servant.

184.* Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Obstructing sale of property offered for sale by authority of public servant.

185.* Whoever, at any sale of property held by the lawful authority of a public servant as such purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

186.* Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

* As to authority for instituting prosecutions under ss. 183 to 186, (both inclusive), see the new Code of Criminal Procedure (Act V, of 1898), s. 195 (1) (a).

187.—Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

Omission to assist public servant when bound by law to give assistance.

and, if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice or of preventing the commission of an offence,† or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence,† or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188.* Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

Disobedience to order duly promulgated by public servant.

shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and, if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

* As to authority for instituting prosecutions under ss. 187 to 188, (both inclusive), see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

† In s. 187, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss 41 and 42 of this Code,—See s. 40 of this Code, *supra*,

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger or riot. A has committed the offence defined in this section.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.*

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

191. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

* As to the application of ss. 194, 195, 201 to 203, 211 to 214, 216, 221 to 225 to offences under special or local laws, see s. 40, *supra*.

As to authority for instituting prosecutions under ss. 193 to 196, 199, 200, 205 to 211, and 228, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (b).

As to procedure in case of the offences in case of the offence described in s. 228, see the new Code of Criminal Procedure (Act V. of 1898), ss. 430, 431, 432, and the Presidency Small Cause Courts Act (XV. of 1882, Ch. XII).

As to whipping for offences punishable under s. 193, or defined in ss. 194, 195, and 211, see the Whipping Act (VI. of 1864), ss. 4-6.

As to punishment for offences under ss. 193 to 196, 201, 211, and 212, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(a) A, in support of a just claim which B has against Z for one thousand rupees falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false and, therefore, gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A, in good faith, believes it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies, as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation. A has given false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record

Fabricating false evidence. or makes any document containing a false statement, intending that such circumstance, false entry, or false

statement, may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A with the intention of causing Z to be convicted of a criminal conspiracy writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court Martial* is a judicial proceeding.†

Explanation 2—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of judicial proceeding‡ though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding,‡ though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194. § Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is capital "by the law or British India or England"† shall be punished

* In explanation 1 to s. 193, the words, "or before a Military Court of Request," have here been omitted, having been repealed by the Cantonments Act (XIII. of 1889).

† For definition of "judicial proceeding" in explanations (1) and (2) to s. 193, see the new Code of Criminal Procedure (Act V. of 1898), s. 4 (m).

‡ For definition of "judicial proceeding" in explanation (3) to s. 193, see the new Code of Criminal Procedure (Act V. of 1898), s. 4 (m).

§ In ss. 194 and 195 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code,—See s. 43 of this Code, *supra*.

with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

and, if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

If innocent person be thereby convicted and executed.

195.* Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause,

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

any person to be convicted of an offence which, "by the law of British India or England,"† is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses, or attempts, to use as true or genuine evidence, any evidence

Using evidence known to be false.

which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Whoever issues or signs any certificate required by law

Issuing or signing false certificate

to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

* In ss. 194 and 195 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*

† In ss. 194 and 195, as amended by s. 7 of the Indian Penal Code Amendment Act (XXVII. of 1870), for the words "by the Code or the law of England," the words quoted have been substituted.—See the Indian Railways Act (IX. of 1890), s. 149.

198. Whoever corruptly uses, or attempts to use, any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

199. Whoever, in any declaration* made or subscribed by him, which declaration* any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

False statement made in declaration which is by law receivable as evidence

200. Whoever corruptly uses, or attempts to use, as true, any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration, knowing it to be false.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

201.† Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

Causing disappearance of evidence of offence, or giving false information to screen offender—

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which if a capital offence ; may extend to seven years, and shall also be liable to fine;

* In s. 199, for meaning of "declaration," see s. 200, explanation *infra*.

† In s. 201, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

The word "offence" in s. 201 includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely: 302, 304, 382, 392, to 399, 402, 435, 436, 449, 450, 457 to 460.—See explanation to s. 203, *infra*.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the imprisonment provided for the offence, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202.* Whoever, knowing or having reason to believe that an offence† has been committed, intentionally omits to give any information respecting that offence‡ which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203.‡ Whoever, knowing or having reason to believe that an offence† has been committed, gives any information respecting that offence‡ which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.§—In sections 201 and 202, and in this section, the word ‘offence’ includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

* In s. 202 the word “offence” has the same meaning when the thing punishable under the special or local law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*. Also see the explanation to s. 203, *infra*.

† As to meaning of ‘offence’ in ss. 202 and 203, see explanation to s. 203, *infra*.

‡ In s. 203 the word “offence” denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40, *supra*.

§ This explanation has been added by the Indian Criminal Laws Amendment Act (III, of 1894) s. 5.

204. Whoever secretes or destroys any document which he

Destruction of document to prevent its production as evidence.

may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. Whoever falsely personates another, and, in such assumed

False personation for purpose of act or proceeding in suit or prosecution.

character, makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Whoever fraudulently removes, conceals, transfers, or

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Whoever fraudulently accepts, receives, or claims any

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil

suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering
decree for sum not due.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be under A's decree. Z has committed an offence under this section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Dishonestly making
false claim in Court.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently obtaining
decree for sum not due.

211.* Whoever, with intent to cause injury to any person, institutes, or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful

False charge of offence
made with intent to
injure.

* In s. 211 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of Code. *supra*.

ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212.* Whenever an offence has been committed, whoever
harbours† or conceals a person whom
he knows or has reason to believe to
be the offender with the intention of
screening him from legal punishment,

Harbours offender —

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

and, if the offence is punishable with transportation for life, or if punishable with transportation for life, or with imprisonment. with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

‘Offence’ in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.‡

* In s. 212, the word “offence” has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

† As to meaning of “harbour,” see s. 216B, *infra*.

‡ This paragraph has been inserted by the Indian Criminal Law Amendment Act (III. of 1894) s. 7.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustrations.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213.* Whoever accepts, or attempts to obtain, or agrees to

Taking gift, &c., to screen
an offender from punish-
ment—

accept, any gratification for himself
or any other person, or any restitu-
tion of property to himself or any
other person, in consideration of his

concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if a capital offence;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall be liable to fine ;

if punishable with transpor-
tation for life, or with impri-
sonment.

or with imprisonment which may
extend to ten years, shall be punished
with imprisonment of either descrip-
tion for a term which may extend to

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214.† Whoever gives or causes, or offers or agrees to give or

Offering gift or restoration
of property in consideration
of screening offender—

cause any gratification to any per-
son, or to restore or cause the restor-
ation of any property to any person
in consideration of that person's con-

cealing an offence, or of his screening any person from legal

* In s. 213, the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

For exception to s. 213, see s. 214, *except.*, *infra*.

† In s. 214, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.*

Illustrations.—[Repealed by the old Criminal Procedure Code (Act X. of 1882)]

215. Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

216.† Whenever any person convicted of, or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be

* This exception to s. 214 has been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 6, for the one originally enacted.

† In s. 216 the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine—See s. 40, *supra*,

apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours* or conceals that person, with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if the offence for which the person was in custody or is ordered to be apprehended, is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if a capital offence;

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

if punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act of omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

216A.† Whoever, knowing or having reason to believe that

* As to meaning "harbour" see s. 216B *infra*,

† This paragraph in s. 216 has been inserted by the Indian Criminal Law Amendment Act (X. of 1886), s. 23.

‡ S. 216A has been inserted by the Indian Criminal Law Amendment Act (III. of 1891), s. 8.

Penalty for harbouring robbers or dacoits. any persons are about to commit, or have recently committed, robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

216B.* In sections 212, 216, and 216A, the word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension.

Definition of 'harbour' in sections 212, 216, and 216A.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent

* S. 216B has been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 8.

to save, or knowing that he is likely thereby to save, any property from forfeiture, or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that, in so doing, he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221.* Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for, an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death ; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with

* in s 221, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code,— See s. 40 of this Code, *supra*.

transportation for life, or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222* Whoever, being a public servant, legally bound as such public servant to apprehend, or to keep

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

in confinement, any person under sentence of a Court of Justice for any offence, "or lawfully committed to custody,"† intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intention-

ally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

with transportation for life, or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, "or if the person was lawfully committed to custody."†

223* Whoever, being a public servant, legally bound as such

Escape from confinement or custody negligently suffered by a public servant.

public servant to keep in confinement any person charged with, or convicted of, any offence, "or lawfully committed to custody,"† negligently suffers such person to escape from confinement,

* In ss 222, 223, and 224 the word "offence," denotes a thing punishable under this Code, or under any special or local law as defined in ss 41 and 42 of the Code.—Sec s 40 of this Code, *supra*

† In ss. 222 and 223 the words quoted have been inserted by the Indian Penal Code Amendment Act (XXVII, of 1870), s. 8.

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224.* Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225.† Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

Resistance or obstruction to lawful apprehension of another person.

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

or. if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transporta-

* In s. 224 the word "offence," denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† In s. 225 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in s. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

tion for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225A.* Whoever, being a public servant legally bound, as such public servant, to apprehend or to keep in confinement any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225B.† Whoever, in any case not provided for in section 224, or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Resistance or obstruction to lawful apprehension or escape, or rescue in cases not otherwise provided for.

* S. 225A has been substituted by the Indian Criminal Law Amendment Act (X, of 1886), s. 24 (1), for s. 225A as inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 9.

Chaps. IV and V. of the Code apply to offences punishable under s. 225A.—See the Indian Penal Code Amendment Act (XXVII. of 1870) s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

† S. 225B has been substituted by the Indian Criminal Law Amendment Act (X, of 1886), s. 24 (1), for s. 225A as inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 9.

Chaps. IV. and V. of the Code apply to offences punishable under s. 225B.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empannelled, or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empannelled, or sworn, or knowing himself to have been so returned, empannelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.*

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.†

* As to enhanced punishment for second conviction for certain offences under Ch. XII., see s. 75, *supra*.

† In s. 230, the first paragraph has been substituted, by the Indian Penal Code Amendment Act (XIX. of 1872), for the one originally enacted.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of this chapter, notwithstanding that it may have ceased to be used as money.*

Queen's coin.

Illustrations.

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company's rupees is the Queen's coin.
- (e) The 'Farukhabad' rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin, although it is no longer so used.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, Counterfeiting coin. coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Counterfeiting the Queen's coin. Queen's coin shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, Making or selling instrument for counterfeiting coin. sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

* In s. 230, the second paragraph has been substituted by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (1), for the one which had been substituted for the Indian Penal Code Amendment Act (XIX. of 1872).

† In s. 230, ill. (e) has been added by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (2)

234. Whoever makes or mends, or performs any part of the

Making or selling instrument for counterfeiting Queen's coin.

process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Whoever is in possession of any instrument or material

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for the purpose, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine;

and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India,

Abetting in India the counterfeiting out of India of coin.

shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing

Import or export of counterfeit coin.

or having reason to believe that the same as counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Who ever imports into British India, or exports therefrom, any counterfeit coin which he

Import or export of counterfeit of the Queen's coin.

knows, or has reason to believe, to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Delivery to another of coin, possessed with the knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Delivery of coin as genuine, which, when first possessed the deliverer did not know to be counterfeit.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

242. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof

244. Whoever being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

Unlawfully taking coining instrument from mint.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminished the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

248. Whoever performs on any coin any operation which

Altering appearance of coin with intent that it shall pass as coin of different description.

alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Whoever performs on any of the Queen's coin any

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Whoever, having coin in his possession with respect

Delivery of coin possessed with knowledge that it is altered.

to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Whoever, having coin in his possession with respect

Delivery of Queen's coin possessed with knowledge that it is altered.

to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Whoever fraudulently, or with intent that fraud may

Possession of coin by person who knew it to be altered when he became possessed thereof.

be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with

imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249, has been performed, but in respect of which he did not at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting Government stamp.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished

Having possession of instrument or material for counterfeiting Government stamp.

*As to meaning of "Government," see s. 263A (4), *infra*.

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued, by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government* for the purpose of revenue, intending to use or dispose of the same as a genuine stamp or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Whoever fraudulently, or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government* for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such

* As to meaning of "Government," see s. 263A (1) *infra*.

stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Whoever fraudulently, or with intent to cause loss to Government,* uses for any purpose a stamp known to have been before used a stamp issued by Government* for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263 Whoever fraudulently, or with intent to cause loss to Government,* erases or removes from a stamp issued by Government* for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or, with both.

263A.† (1) Whoever—
Prohibition of fictitious stamps.

- (a) makes, knowingly utters, deals in, or sells any fictitious stamps, or knowingly uses for any postal purpose any fictitious stamp, or
 - (b) has in his possession, without lawful excuse, any fictitious stamp, or
 - (c) makes or, without lawful excuse, has in his possession any die, plate, instrument, or materials for making any fictitious stamp,
- shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument, or materials in the possession of any person for making any fictitious stamp, may be seized, and shall be forfeited.

* As to meaning of "Government," see s. 263A (4) *infra*.

† S 263A has been added by the India Criminal Law Amendment Act (III. of 1895), s. 2.

(3) In this section 'fictitious stamp' means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263 (both inclusive), the word 'Government,' when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding any thing in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions, or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false instrument for weighing.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weights or measures.

267. Whoever makes, sells, or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing

Making or selling false weights or measures.

that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

268.* A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of any disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Malignant act likely to spread infection of any disease dangerous to life

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine,† for regulating the intercourse of ves-

Disobedience to quarantine-rule.

* The definition of "public nuisance" here given applies in the case of all Acts of the Governor-General in Council and Regulations under 33 Vict., c 3, s. 1, made after 14th January 1869—See the General Clauses Act (X. of 1857), s. 3 (44) and s. 4 (2).

As to procedure in case of public nuisance—see the new Code of Criminal Procedure (Act V. of 1861), Ch. X., s. 133, *et seq.*

† For power to make rules relating to quarantine, see the Indian Quarantine Act (I of 1870).

sels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months. or with fine, or with both.

272.* Whoever adulterates any article of food or drink so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273.* Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274.* Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275.* Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either

* For power to order destruction of the food or other thing in respect of which a conviction is had under ss. 272-275, see the new Code of Criminal Procedure (Act V, of 1898) s 521 (2)

description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of drug as a different drug or preparation.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Fouling water of public spring or reservoir.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Making atmosphere noxious to health.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash driving or riding on a public way.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of vessel.

281. Whoever exhibits any false light, mark or buoy, intend-

Exhibition of false light,
mark, or buoy.

ing or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Whoever knowingly or negligently conveys, or causes to be conveyed, for hire, any person by water, in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Conveying person by
water for hire in unsafe or
overloaded vessel.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Danger or obstruction
in a public way or naviga-
tion.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Negligent conduct with
respect to poisonous sub-
stance.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with
respect to fire or combusti-
ble matter.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,
 Negligent conduct with respect to explosive substance.

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
 Negligent conduct with respect to machinery.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
 Negligent conduct with respect to pulling down or repairing building.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.
 Negligent conduct with respect to animal

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance in cases not otherwise provided for.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Continuance of nuisance after injunction to discontinue.

292.* Whoever sells or distributes, imports, or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Sale, &c. of obscene books, &c.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293.* Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Having in possession obscene book, &c., for sale or exhibition.

Obscene acts and songs. **294.†** Whoever, to the annoyance of others—

- (a) does any obscene act in any public place, or
- (b) sings, recites, or utters any obscene song, ballad or words in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

*For power to order the destruction of copies of the thing in respect of which a conviction under s. 292 or s. 293 is had, see the new Code of Criminal Procedure (Act V of 1898) s 521.

† S 294 has been substituted for the original by the Indian Criminal Law Amendment Act (III. of 1895), s 3.

294A.* Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Keeping lottery office.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, or any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention thereby of insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Injuring or defiling place of worship, with intent to insult the religion of any class.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Disturbing religious assembly.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, with the knowledge that the feeling of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

Trespassing on burial-places, &c.

* S. 294A has been inserted by the Indian Penal Code Amendment Act (XXVII of 1870), s. 10.

As to authority for instituting prosecution under s. 294A, see the new Code of Criminal Procedure (Act V. of 1898), s. 196.

Chaps. IV, V, and XXIII, of the Code apply to offences punishable under s. 294A.—See the Indian Penal Code Amendment Act (XXVII. of 1870) s. 13.

commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298.* Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

CHAPTER XVI.†

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely, by such act, to cause death, commits the offence of culpable homicide.

Illustrations.

(a) A lays sticks and turf over a pit, with intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

* Offences punishable under s 298 are compoundable—See the new Code of Criminal Procedure (Act V. of 1898) s. 345. As to the stage of proceedings at which composition is allowed without the leave of the Court, see cl (5) of s. 345 aforesaid.

† As to duty to give information of offences punishable under s 302, 303, or 304 see the new Code of Criminal Procedure (Act V. of 1898) s 44. See also (as to offences punishable under s. 302 or 304), s 45 of the Code, and (as to murder and culpable homicide not amounting to murder) s. 45 of the Code as amended for Burma by the Upper Burma Village Regulation (XIV of 1887), s. 4. and by the Lower Burma Village Act (III of 1889), s 5.

As to whipping in Upper Burma, for offences mentioned in ss. 302, 304, and 307, see the Burma Laws Act (XIII of 1898), s 4 (3) (b) and Sch II.

As to punishment for offences under ss. 302 304, 307, and 308 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s, 14.

(b) A knows Z to be behind a bush. B does not know it. A intending to cause or knowing it to be likely to cause, Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence, but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although, by resorting to proper remedies and skilful treatment, the death might have been prevented.

Explanation 3—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or,

Murder.

2ndly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or,

3rdly, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or,

4thly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient, in the ordinary course of nature, to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as, in the ordinary course of nature, would cause death.

(c) A, intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature, Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :*

Firstly—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

* As to the application of these provisos in the case of causing hurt on provocation, see s. 335, explanation, *infra*.

(b.) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c.) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d.) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e.) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f.) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant, acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offenders having taken undue advantage, or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation, or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration

A, by instigation voluntarily causes Z, a person under 18 years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder shall be punished with death or transportation for life, and shall also be liable to fine.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

304A.* Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*S 304A has been inserted by the Indian Penal Code Amendment Act (XXVII of 1870), s. 12. Chaps IV., V., and XXIII. of the Code apply to offences punishable under s. 304A.—See Act XXVII. of 1870, s. 13

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, by that act, caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.*

Illustrations.

(a.) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section

(b.) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c.) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if, by such firing, he wounds Z, he is liable to the punishment provided by the latter part of *the first paragraph of* this section.

(d.) A, intending to murder Z by poison, purchases poison, and mixes the same with food which remains in A's keeping. A has not yet committed the offence, defined in this section. A places the food on Z's table, or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

*This clause has been added by the Indian Penal Code Amendment Act XXVII. of 1870, s. 11.

†The words italicized have been inserted by the Repealing and Amending Act (XII. of 1891).

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may not extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z under such circumstances that, if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both."*

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, is a thug.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Of the Causing of Miscarriage ; of Injuries to unborn Children ; of the Exposure of Infants ; and of the Concealment of Birth.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*In s. 309, the words quoted have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 7, for the words, "and shall also be liable to fine."

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

and, if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

316. Whoever does any act under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Whoever, by secretly burying, or otherwise disposing of, the dead body of a child, whether such child die before, or after, or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of Hurt.**

Hurt. **319.** Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

* As to the application of ss. 327-331 to offences under special or local laws see s.40, *supra*.

Offences punishable under ss. 323 and 334 are compoundable, and those punishable, under ss. 324, 325, 335, 337, and 338, may be compounded with the permission of the Court.—See the new Code of Criminal Procedure (Ac V. of 1898), s. 345. As to stage of proceeding at which no composition is allowed without the leave of the Court, see sub-s (5), s. 345 aforesaid.

As to whipping in Upper Burma for offences mentioned in ss 225, 326, 327 329 and 333, see the Burma Laws Act (XIII. of 1898), s. 4 (3) (b), and Sch II, in a Punjab Frontier District or in Baluchistan for offences punishable under ss 325 and 326, see the Punjab Frontier Crimes Regulation (IV. of 1887), s 8.

As to punishment for offences under ss 325, 326, and 328, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

320. The following kinds of hurt
Grievous hurt. only are designated as "grievous."

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does there-
Voluntarily causing hurt, by cause hurt to any person, is said "voluntarily to cause hurt."

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."
Voluntarily causing grievous hurt.

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished, with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for voluntarily causing hurt.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing hurt by dangerous weapons or means.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for voluntarily causing grievous hurt.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

327.* Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person inter-

* Voluntarily causing hurt to extort property, or to constrain to an illegal act.

*In ss. 327 and 328 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code—See s. 40 of this Code, *supra*.

ested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328.* Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, &c with intent to commit an offence.

329.* Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

330.* Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

* In ss. 328, 329, 330, and 331, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code. See s. 40 of this Code, *supra*.

Illustrations.

(a) A a police-officer tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c.) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331.* Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person in-

terested in the sufferer to restore, or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his

Voluntarily causing hurt to deter public servant from his duty.

duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in

consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge

Voluntarily causing grievous hurt to deter public servant from his duty.

of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant

or in consequence of anything done or attempted to be done by

*In ss. 329, 330 and 331, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code. See s. 40 of this Code, *supra*.

that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

334. Whoever voluntarily causes hurt on grave and sudden provocation,* if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing hurt on provocation.

335. Whoever "voluntarily"† causes grievous hurt on grave and sudden provocation,‡ if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Voluntarily causing grievous hurt on provocation.

Explanation.—The last two sections are subject to the same provisos as exception 1, section 360.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

338. Whoever causes grievous hurt to any person by doing

* As to provocation, see explanation to s. 335 *infra*.

† In s. 335 the word quoted has been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 8

‡ As to provocation in s. 335, see explanation to it next following.

Causing grievous hurt by act endangering life or personal safety of others. any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

*Of Wrongful Restraint and Wrongful Confinement.**

339. Whoever voluntarily obstructs any person, so as to prevent that person, from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint,

Exception.—The obstruction of a private way over land or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Wrongful confinement,

Illustrations.

(a.) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b.) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful restraint,

* As to the application of ss. 347 and 348 to offences under special or local laws see s. 40, *supra*.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for wrongful confinement.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for three or more days.

344. Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for ten or more days.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Wrongful confinement of person for whose liberation writ has been issued.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement in secret.

347.* Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in

Wrongful confinement to extort property or constrain to illegal act.

*In ss. 347 and 348 the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in ss. 41 and 42 of this Code—see s. 40 of this Code, *supra*.

such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348.* Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession or compel restoration of property.

Of Criminal Force and Assault.†

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as bring that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling :

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described :—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion or to cease to move.

In ss. 347 and 348 the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in ss. 41 and 42 of this Code—See s. 40 of this Code, *supra*.

†Offences punishable under ss. 352, 355, and 358, are compoundable.—See the new Code of Criminal Procedure (Act V of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid* sub-s. (5).

As to punishment for an offence under s. 354, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or

Criminal force.

knowing it to be likely that, by the use of such force, he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(a.) Z is sitting in a moored boat on a river. A unfastens the mooring, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(b.) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(c.) Z is riding in a palanquin. A intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d.) A intentionally pushes against Z in the street. Here A has by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(e.) A throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he has done this without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(f.) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g.) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated as to be in contact with Z, and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force to Z.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who

Assault.

makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a.) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for assault or criminal force otherwise than on grave provocation.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or

if the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or

Assault or criminal force to deter a public servant from discharge of his duty.

with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of

of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to woman with intent to outrage her modesty.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person otherwise than on grave provocation.

356. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

357. Whoever assaults or uses criminal force to any person in attempting wrongfully to confine that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force in attempt wrongfully to confine person.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Assault or criminal force on grave provocation.

Explanation.—The last section is subject to the same explanation as section 352.

*Of Kidnapping, Abduction, Slavery, and Forced Labour.**

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

*As to punishment for offences under ss. 363 to 369, enquired into by a Council of the Punjab Frontier Districts or in Baluchistan, see the Punjab Frontier Regulation (IV. of 1887), s. 14.

Offences punishable under s. 374 are compoundable.—See the new Code of Criminal Procedure, Act V. of 1898, s. 345. As to stage of proceedings at which an offence may be tried without the leave of the Court, see ibid., subsec. (1), section 17.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnaping from British India.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Kidnapping from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction.

363. Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for kidnapping.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

Illustrations.

(a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting with intent secretly and wrongfully to confine person

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, &c.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with which he conceals or detains such person in confinement.

Wrongfully concealing or keeping in confinement a kidnapped or abducted person.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting child under ten years with intent to steal from its person.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will, any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

373. Whoever buys, hires, or otherwise obtains possession of, any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Of Rape.**

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions —

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt. }

*As to whipping see the Whipping Act (VI. of 1919), ss. 4—6; and in the Punjab Fortien Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married.

Fifthly.—With or without her consent, when she is under twelve† years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under twelve† years of age, is not rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of Unnatural Offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

*As to whipping, see the Whipping Act (VI of 1864), ss 4—6; and in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulations (IV. of 1887), s 8.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

†In s 375, the word "twelve" has been substituted for the word "ten" by the Indian Criminal Law Amendment Act (X. of 1891), s. 1.

CHAPTER XVII.*

OF OFFENCES AGAINST PROPERTY.

Of Theft.†

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Theft.

Explanation 1.—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person who by any means causes an animal to move is said to move that animal, and to move everything which in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

*As to enhanced punishment for second conviction for certain offences under Ch. XVII, see s. 75, *supra*

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

†All persons are bound to give information of offences punishable under s. 382—See the new Code of Criminal Procedure (Act V. of 1898), s. 44.

As to whipping for offences under ss. 378, 380, 381-382, see the Whipping Act (IV. of 1909), ss. 2, 3, and (in the Assam Hill Districts) Reg. III. of 1875, ss. 2, 3.

As to whipping for offences under s. 382 in Upper Burma, see the Upper Burma Laws Act (XIII. of 1898), s. 43 (b), and Sch. II and Sch. III.; in the Punjab Frontier Districts and Baluchistan, the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 379-382 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to extortion by threat of accusation of an offence under s. 377, see ss. 388, 389, *infra*.

Illustrations.

(a.) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b.) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c.) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d.) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e.) Z going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith, and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f.) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and, if A dishonestly removes it, A commits theft.

(g.) A finds a ring lying on the High road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h.) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i.) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A not owing the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j.) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k.) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l.) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(m.) A being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n.) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may have conceived that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o.) A is the paramour of Z's wife. She gives a valuable property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p.) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

379. Whoever commits theft shall be punished with imprisonment for theft. ment of either description for a term which may extend to three years, or with fine, or with both.

380. Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a.) A commits theft on property in Z's possession, and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b.) A picks Z's pocket having posted several of his companions near him, in order that they may restrain Z if Z should perceive what is passing, and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

*Of Extortion.**

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted

*As to the application of ss. 388 and 389 to offences under special or local laws, see s. 21 supra. Continued to next page.

into a valuable security, commits "extortion."

Illustrations.

(a.) A threatens to publish a defamatory libel concernig Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion

(b.) A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(c.) A threatens to send club-men to plough up Z's fields unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d.) A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted in a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

387. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

388.* Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, any offence punishable with death, or with transportation, &c.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

A to whipping for offences defined in ss. 388 and 389, see the Whipping Act (IV. of 1909), ss. 2, 3, and (in the Assam Hill Districts) Reg III. of 1875, ss. 2, 3

As to whipping for offences defined in ss. 386 and 387 in Upper Burma, see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (b)

*In ss 388 and 389, the word "offence" denotes a thing punishable under Code, or under any special or local law as defined in ss. 41 and 42 of this Code. See s. 40 of this Code, *supra*,

ation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

389.* Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Of Robbery and Dacoity.†

390. In all robbery there is either theft or extortion.

Robbery.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away,

When theft is robbery.

property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person, death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the

When extortion is robbery.

person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint

* In ss. 388 and 389 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.— See s. 40 of this Code, *supra*.

† All persons are bound to give information of offences punishable under ss. 392 to 399 or 402— See the new Code of Criminal Procedure (Act V. of 1898), s. 44. See also the same section as amended for Burma by the Upper Burma Village Regulation (XIV of 1887), s. 4, and by the Lower Burma Village Act (III. of 1889), s. 5, as to dacoity and robbery.

As to whipping for offences under ss. 390, 391, 393, 394, see the Whipping Act (IV of 1909); for offences under ss. 392-402 (in Upper Burma), see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (b), and Sch. II, for offences under ss. 392-399 (in the Punjab Frontier District and in Baluchistan), see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 392-399, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

to that person or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustration.

(a) A holds Z down, and fraudulently takes Z's money, and jewels from Z's clothes without Z's consent. Here A has committed theft and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being, at the time of committing the extortion in his presence. A has therefore committed robbery.

(c.) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d.) A obtains property from Z by saying, "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit, or attempt to commit a robbery, or, where the whole number of persons conjointly committing or attempting to commit, a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. If any person, in committing, or in attempting, to commit, robbery, voluntarily causes hurt, such person and any other person jointly concerned in committing, or attempting,

As to punishment for offences under ss. 392-399, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV, of 1887), s. 14.

to commit, such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and also be liable to fine.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

Of Criminal Misappropriation of Property.

403.* Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

Illustrations.

(a) A takes property belonging to Z out of Z's possession, in good faith, believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here if, A was under the impression that he had Z's implied consent to take the book for the purpose of reading, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B being joint-owners of a horse, A takes the horse of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z bearing a blank endorsement. A knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

*As to framing charge under s. 403 see s. 252 of the new Code of Criminal Procedure (Act V. of 1898).

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it, it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Whoever dishonestly misappropriates or converts to his

Dishonest misappropriation of property possessed by a deceased person at the time of his death, own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust.

405* Whoever, being in any manner entrusted with pro-

Criminal breach of trust, property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law

*As to framing charge under s. 405, see s. 222 of the new Code of Criminal Procedure (Act V. of 1898).

prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or which suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(a) A, being executor to the will of a deceased person dishonestly disobeys the will which directs him to divide the effects according to the will and appropriates them to his own use. A has committed criminal breach of trust.

(b.) A is a warehouse-keeper. Z, going on a journey entrusts his merchandise to A under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(d.) But if A, in the last illustration, not dishonestly, but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's direction, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money, and is either directed by law or bound by a contract, express or implied, with the Government to pay out to a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

408. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

409. Whoever, being in any manner entrusted with property, Criminal breach of trust or with any dominion over property, in by public servant or by his capacity of a public servant, or in banker, merchant, or as an agent in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Of the Receiving of Stolen Property.**

410. Property the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed, is designated as stolen property, "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India."† But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

412 Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity or dishonestly receives from a person whom he knows or has reason to believe to belong or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

*As to whipping for the offences defined in s. 411, see the Whipping Act (IV. of 1909), ss. 2, 3, for the offence defined in s. 412, see *ibid*; also (as to Burma), the Upper Burma Laws Act (XIII of 1898), s. 4 (3) (b), and Sch. II.; for the offences defined in s. 413 see the Whipping Act (VI. of 1864), ss. 4, 6.

As to punishment for offences under ss. 411-414, enquired into by a Council of Elders in a Punjab Frontier District or in Beluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887) s. 14.

†In s. 410, the words, "the offence of," have here been omitted: the word "the" being repealing by the Repealing and Amending Act (XII of 1891), and the words "offence of," by the Indian Penal Code Amendment Act (VIII. of 1882), s. 9.

†In s. 410, the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882) s. 9.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(a.) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z, to let him have on credit goods for which he does not mean to pay. A cheats.

(b.) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c.) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d.) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e.) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f.) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g.) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo-plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats. But, if A, at the time of obtaining the money, intends to deliver the indigo-plant, afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats

(i) A sells and conveys an estate to B. A, knowing that, in consequence of such sale, he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person is said to 'cheat by personation' if he cheats by pretending to be some other person or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustration

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfer, or causes to be transferred, to any person, without adequate consideration, any property, intending thereby to prevent, or

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors,

OFFENCES AGAINST PROPERTY. [1860 : Act XLV.]

knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to, any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or person for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of Mischief.**

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the

*All persons are bound to give information of offences punishable under s. 435 or 436 — See the new Code of Criminal Procedure (Act V. of 1898), s. 44.

Offences punishable under ss. 426 and 427 are, in certain cases, compoundable — See *ibid.*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid.*, sub-s. (5).

As to whipping in the Punjab Frontier Districts and Baluchistan for offences punishable under ss. 427 to 429, 437, and 436, see the Punjab Frontier Crimes Regulation (IV of 1887), s. 8; in Upper Burma for offences punishable under ss. 435, 436, and 440, see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (b), and Sch. II.

As to punishment for offences under ss. 427, 429, 435, and 436, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

destruction of any property, or any such change in any property, or in the situations thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the persons who commits the act, or to that person or others jointly.

Illustrations.

(a) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint-property with Z in a horse, shoots the horse intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

426. Whoever commits mischief, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing, as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Whoever commits mischief by fire or any explosive

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards,"* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

436. Whoever commits mischief by fire or any explosive

Mischief by fire or explosive substance with intent to destroy house, &c.

substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

437. Whoever commits mischief to any decked vessel, or

Mischief with intent to destroy or make unsafe a decked vessel or one of 20 tons burden.

any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Whoever commits, or attempts to commit, by fire or

Punishment for the mischief described in section 437, committed by fire or explosive substance.

any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

439. Whoever intentionally runs any vessel aground or

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* In s. 435 the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII, of 1882), s. 10.

440. Whoever commits mischief, having made preparation
 Mischief committed after for causing to any person death, or
 preparation made for caus- hurt, or wrong restraint, or fear of death,
 ing death or hurt, or of hurt, or of wrongful restraint, shall
 be punished with imprisonment of either description for a
 term which may extend to five years, and shall also be liable
 to fine.

(1) *Criminal Trespass.**

441 † Whoever enters into or upon property in the posses-
 sion of another with intent to commit
 Criminal trespass. an offence, or to intimidate, insult, or
 annoy any person in possession of such property,

or, having lawfully entered into or upon such property,
 unlawfully remains there with intent thereby to intimidate,
 insult, or annoy any such person, or with intent to commit an
 offence,

is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into
 House-trespass, or remaining in any building, tent, or
 vessel used as a human dwelling, or any
 building used as a place for worship, or as a place for the cus-
 tody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the crimi-
 nal trespasser's body is entering sufficient to constitute house-
 trespass.

*As to the application of ss. 441 and 445 to offences under special or local laws
 see s. 40, *supra*.

All persons are bound to give information of offences punishable under ss. 449,
 450, and 456 to 460.—See the new Code of Criminal Procedure (Act V. of 1898),
 s. 44.

Village-headmen, &c., to give information of offences under ss. 449, 450, and 457
 to 460. See the new Code of Criminal Procedure (Act V. of 1898) s. 45.

Offences punishable under ss. 447 and 448 are compoundable.—See *ibid*, s. 345.
 As to stage of proceedings at which no composition is allowable without the leave of
 the Court, see *ibid*, sub s. (5).

As to whipping for offences defined in ss. 443-446, see the Whipping Act (VI. of
 1864) ss. 2, 3, 4, 6.

As to whipping for offences punishable under ss. 448-460 in the Punjab Frontier
 Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887),
 s. 8; for offences punishable under ss. 455, 458, 459, 460, in Upper Burma, see
 the Upper Burma Laws Act (XIII. of 1898) s. 4 (3) (b) and Sch. II.

As to punishment for offences under ss. 448-460, enquired into by a Council of
 Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier
 Crimes Regulation (IV. of 1887), s. 14.

†In s. 441 the word "offence" has the same meaning when the thing punishable
 under the special or local law as defined in ss. 41 and 42 is punishable under
 law with imprisonment for a term of six months or upwards, whether with or with-
 out fine.—See s. 40, *supra*.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass.

444. Whoever commits lurking house-trespass after sunset and before sunrise is said to commit "lurking house-trespass by night.

445.* A person is said to commit "house-breaking," who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than himself, or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

*In s 445 the word 'offence' denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—Sec s. 40 of Arms Code, *supra*.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a.) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b.) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c.) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d.) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e.) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f.) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-trespass.

(g.) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-trespass.

(h.) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with transportation for life.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in order to commit offence punishable with imprisonment

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongful restraining any person, or for putting any person in fear of hurt, or of assaults, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

House-trespass after preparation for hurt, assault or wrongful restraint.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

456. Whoever commits lurking house-trespass by night, or house-breaking by night shall be punished with imprisonment or either description for a term which may extend to three years, and shall be liable to fine.

457. Whoever commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

461. Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle containing property, which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS* AND TO TRADE OR PROPERTY-MARKS.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

464. A person is said to make a false document—
Making a false document.

First—Who dishonestly or fraudulently makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time which he knows that it was not made, signed, sealed, or executed ; or

Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time or such alteration ; or

*As to authority for instituting prosecutions under s. 463, 471, 475, or 476, see the new Code of Criminal Procedure (Act V. of 1898), s. 195, sub-s (1), cl. (c).

As to procedure in case of offences described in s. 463, 471, 474, 475, 476, & 477, see the Code of Civil Procedure (Act XIV. of 1882), s. 643.

As to whipping for the offence defined in ss 463, 466, 469, see the Whipping Act (VI. of 1864), ss. 4, 5.

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that, by reason of deception practised upon him, he does not, know the contents of the document or the nature of the alteration.

Instructions.

(a) A has a letter of credit upon B for Rs. 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker signed by A, without inserting the sum payable, and authorized B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words ; "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note, and makes it payable to Z or his order, by writing on the bill the words, "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter, and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k.) A without B's authority, writes a letter, and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(a.) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b.) A writes the word "accepted" on a piece of paper, and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery, and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c.) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.

(d.) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e.) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and, in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that that document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

466 Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or of public register, &c., or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant

in his official capacity, or an authority to institute or defend a suit or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Whoever forges a document which purports to be a Forgery of valuable security, will, &c. valuable security or a will or an authority to adopt a son, or which purports to give authority to the person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. A false document made wholly or in part by forgery is designated "a forged document."
"A forged document."

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he has forged such document.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or with such intent has in his possession any such seal, plate, or other instrument knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, Making or possessing counterfeit, seal, &c., with intent to commit forgery punishable otherwise * intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Whoever has in his possession any document knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited shall be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete, any document which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477A.* Whoever, being a clerk, officer, or servant, or employed or acting in the capacity of a clerk, officer, or servant, wilfully, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, or account which belongs to, or is in the possession of, his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters, or abets the omission or alteration of, any material particular from or in any such book, paper, writing, valuable security, or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded, or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Of Trade, Property, and Other Marks.†

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade-mark, and, for the purposes of this Code, the expression "trade-mark" includes

*S. 477A has been added by the Indian Criminal Law Amendment Act (III of 1895), s. 4.

† This part of Ch. XVIII. (i.e., ss. 478-489) has been substituted for the original by the Indian Merchandise Marks Act (IV of 1889), s. 3.

As to costs of defence or prosecution, and limitation of prosecutions, under ss. 478-489, see Act IV. of 1889, ss. 14, 15.

As to unintentional contravention of ss. 480-482 or 485 see Act IV. of 1889, s. 8.

As to forfeiture of goods on contravention of ss. 482 or 486-488, see Act IV. of 1889, s. 9.

any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade-marks Act, 1883* and any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade-marks Act, 1883,* are, under order in Council, for the time being applicable

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

481. Whoever marks any moveable property or goods, or uses any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

482. Whoever uses any false trade-mark or any false property-mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the property is of a particular

quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-mark or property-mark, or has in his possession a trade-mark or property-mark, for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

486. Whoever sells or exposes, or has in possession for sale any goods or things with a counterfeit trade-mark or property-mark affixed to, or impressed upon the same, or to or upon any case, package, or other receptacle in which such goods are contained, shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by, or on behalf of, the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

he be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Whoever makes any false mark upon any case, package, or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does not contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

488 Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud be punished as if he had committed an offence against that section.

489. Whoever removes, destroys, defaces, or adds to any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*'Of Currency-notes and Bank-notes.'**

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*'Explanation.—*For the purposes of this section and of sections 489B, 489C, and 489D, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in, or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, and intending to use the same as genuine, or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Ss. 489A, 489B, 489C, and 489D, have been added after s. 489 by the Currency Notes Forgery Act (XII. of 1899), s. 2.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument, or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

CHAPTER XIX.*

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. Whoever being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(a) A, a palanquin-bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(b) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(c) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, legally omits to do so. A has committed the offence defined in this section.

(d) A, by unlawful means, compels B, a cooly, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was lawfully bound to carry the baggage, he has not committed any offence.

*Cognizance may be taken of an offence under Ch. XIX. only on complaint by an aggrieved party.—See the New Code of Criminal Procedure (Act V. of 1898), s. 198.

Offences punishable under Ch. XIX. are compoundable.—See the New Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of Proceedings at which no composition is allowable without the leave of the Court, see *ibid.*, sub-s. (5).

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dak company to drive his carriage for a month. B employs the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A, in the course of the journey, voluntarily leaves the carriage. Here although A did not contract with B, A is guilty of an offence under this section.

491. Whoever, being bound by a lawful contract to attend on

Breach of contract to attend on and supply wants of helpless person. or to supply the wants of any person who, by reason of youth or of unsoundness of mind, or a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

492. Whoever, being bound by lawful contract in writing to

Breach of contract to serve at distant place to which servant is conveyed at master's expense. work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him, or neglected to perform the contract on his part.

CHAPTER XX.*

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage. lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Cognizance may be taken of an offence under s. 493, 494, 495, or 496, only on complaint by an aggrieved party, and of an offence under s. 497 or 498 only on

494. Whoever, having a husband or wife living, marries in marrying again during any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, not to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

495. Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. Whoever has sexual intercourse with a person, who is and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the

complaint by the husband or guardian of the woman.—See the New Code of Criminal Procedure (Act V. of 1898) ss. 198, 199.

Offences punishable under ss. 497 and 498 are compoundable.—See *ibid.*, s. 345. As to stage of proceeding under ss. 497 and 498 at which no composition is allowable without the leave of the Court, see *ibid.*, sub-s. (5).

As to punishment for offences under ss. 497 and 498 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both. In such case the wife* shall not be punishable as an abettor.

498. Whoever takes or entices away any woman, who is, and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

CHAPTER XXI †

OF DEFAMATION.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect

*In the Punjab Frontier Districts and Baluchistan a married woman is punishable for adultery.—See the Punjab Frontier Crimes Regulation (IV of 1887), s 32. As to punishment, see also s 14 of that Regulation.

† Cognizance may be taken of an offence under Ch XXI, only on complaint by an aggrieved party.—See the new Code of Criminal Procedure (Act V. of 1898), s. 198.

Offences punishable under s. 500, 501, or 502, are compoundable.—See *ibid* s 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

For power to order the destruction of copies of the thing in respect of which a conviction under s. 501 or 502 is had, see *ibid* s 521.

of his ease or of his calling, or lowers the credit of that person. or causes it to be believed that the body of that person is in a loath-some state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch? A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good, is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respect-

ing the character of such person, as far as his character appears in that conduct, and no farther.

Illustrations.

(a.) A says "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's conduct as a witness, and no farther.

(b.) But, if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith Merits of public performance—any opinion respecting the merits of any performance which its author has submitted to the Judgment of the public or respecting the character of the author, as far as his character appears in such performance, and no farther.

Explanation.—A performance may be submitted to the Judgment of the public expressly or by acts on the part of the author which imply such submission to the Judgment of the public.

Illustrations.

(a.) A person who publishes a book submits that book to the judgment of the public.

(b.) A person who makes a speech in public submits that speech to the judgment of the public.

(c.) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(d.) A says of a book published by Z, "Z's book is foolish, Z must be a weak man; Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(e.) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within the exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having Censure passed in good faith by person having lawful authority over another, conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A judge censuring in good faith the conduct of a witness or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in

good faith, a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith

Accusation preferred in good faith to authorized person.

an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate: if A in good faith complains of the conduct of Z, a servant, to Z's master, if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—It is not defamation to make an imputation

Imputation made in good faith by person for protection of his or other's interests.

on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

(a.) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b.) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in

Caution intended for good of person to whom conveyed or for public good.

good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person

in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple

Punishment for defamation.

imprisonment for a term which may extend to two years, or with fine, or both.

501. Whoever prints or engraves any matter, knowing or

Printing or engraving matter known to be defamatory.

having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Whoever sells or offers for sale any printed or engraved

Sale of printed or engraved substance containing defamatory matter.

substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII.*

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

505.† Whoever makes, publishes, or circulates any statement, rumour, or report,—

- (a) with intent to cause, or which is likely to cause, any officer, soldier, or sailor in the army or navy of Her Majesty, or in the Royal Indian Marine, or in the Imperial Service Troops, to mutiny, or otherwise disregard or fail in his duty as such; or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

* As to whipping in Upper Burma for the offence mentioned in s. 506, see the Upper Burma Laws Act (XIII of 1898), s. 4 (3) (b) and Sch II.

Offences punishable under s. 504 and certain offences punishable under s. 506 are compoundable—See the new Code of Criminal Procedure (Act V, of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid.*, sub-s (5).

† S 505 has been substituted for the original by the Indian Penal Code Amendment Act (IV, of 1898), s. 6.—See Report of Select Committee *Gazette of India* 1898, Pt. V., p. 13.

- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community ;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing, or circulating any such statement, rumour, or report, has reasonable grounds for believing that such statement, rumour, or report is true, and makes, publishes, or circulates it without any such intent as aforesaid.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or omit to do anything which he is legally entitled to do

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(a.) A sits dharna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(b.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or intended to insult the gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.*

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment or to cause such an offence to be committed, and in such attempt does any act towards the commission of

*NOTE—Ss. 13 and 15 of the Penal Code Amendment Act (XXVII. of 1870) enact as follows:—

13. [*Application of certain chapters of Penal Code.*]—The following chapters of the same Code, namely, IV. (*General Exceptions*), V. (*Of Abetment*), and XXIII. (*Of Attempts to commit Offences*), shall apply to offences punishable under the said ss. 121A, 204A, and 304A; and the said Chapters IV and V, shall apply to offences punishable under "ss. 124A, 225A, and 225B." [The words and figures quoted have been substituted for the words and figures "said sections 124A and 225 A," by the second schedule to the Repealing and Amending Act (XII. of 1891).]

15. [*Saving of special and local laws.*]—Nothing contained in this Act (XXVII. of 1870) shall be taken to affect any of the provisions of any special or local law.

Attempts to commit certain offences are compoundable.—See the New Code of Criminal Procedure (Act V. of 1898), s. 345.

As to stage of proceeding at which no composition is allowable without the leave of the Court, see *ibid*, sub-s (5).

the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b.) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

ACT NO. V. OF 1861.

The Police Act, 1861.*

RECEIVED THE G.-G.'s ASSENT ON THE 22ND MARCH 1861

An Act for the Regulation of Police.

WHEREAS it is expedient to re-organize the police, and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows :—

1. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say :—

The words "Magistrate of the district"* shall mean the chief

*This short title has been given to Act V. of 1861 by the Indian Short Titles Act (XIV. of 1897). Act V. of 1861 has been applied to—Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XIII of 1898). As to its extension to Upper Burma as amended by subsequent enactments under s. 46, see notes to that section, *infra*. It has been extended to the Shan States except Khamti Long and Mong Mit, by the Shan States Laws and Criminal Justice Order, 1895 (see *Burma Gazette*, 1895 and 1896, Pt. I, pp. 262, 542, and 128, respectively).

to the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), s. 3 as amended by the Santhal Parganas Laws Regulation (III of 1899); to the Arakan Hill District by the Arakan Hill District Laws Regulations (IX. of 1874), s. 3;

to British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890) s. 3;

to Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3;

to Chittagong Hill-tracts by Reg. (I. of 1900), s. 4, to Upper Burma (except the Shan States) by Act (XII of 1898), s. 4.

the Town of Calcutta and its Suburbs as modified the Calcutta Police Act, 1898, Beng. Act I 1898.

As to application of the Act to the district of Peshawar, Kohat, Hazara, Bannu, Dera Ismail Khan, and Dera Ghazi Khan, see s. 49 of the Punjab Frontier Crimes Regulation (IV. of 1887).

The Act has been declared by notification under s. 3, (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely the District of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum, (see *Gazette of India*, 1881, Pt. I, p. 504); the Porahat Estate in the Singhbhum District (see *Gazette of India*, 1897 Pt. I., p. 1059) and under ss. 3 and 5A of the same Act, in the Pargana of Manipur, see *Gazette of India*, 1899, Pt. II p. 419.

It has been extended, by notification under s. 5 of the same Act, to the Kumaon and Garhwal District (see *Gazette of India*, 1891 Pt. I., p. 185), and (with the exception of ss. 1, 3, 5, 6, 8, 11, 21, 28, 33, 41, 43, 46, and 47) to the Scheduled District of Coorg (see *Gazette of India*, 1888, Pt. I, pp. 88 and 323). ss. 15, 15A, 16, 30, 30A, 31 and 32 have been extended to the Scheduled District in Ganjam and Vizagapatnam see Fort St. George Gazette 1898, Pt. I., p. 667 and Gazette of India, 1898, Pt. I., p. 873.

officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled :

The word "Magistrate shall include all persons within the general police-district exercising all or any of the powers of a Magistrate :

The words "police" shall include all persons who shall be enrolled under this Act :

The word "general police-district" shall embrace any presidency, province, or place, or any part of any presidency, province, or place, in which this Act shall be ordered to take effect :*

The words "District Superintendent"† and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district :

The word "property" shall include any moveable property, money, or valuable security :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Words importing the masculine gender shall include females :

The word "person" shall include a Company or Corporation :

The word "month" shall mean a calendar month :

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.‡

It has been applied to the Baluchistan Agency Territories by the Baluchistan Agency Territories Laws Law, 1890.

As to special enactments in force in Madras, Bombay and the Lower Provinces of Bengal, and extensions of the Act under the power conferred by s. 46, see notes to that section.

As to special enactments for Military, Frontier or Rural police in force in certain parts of British India, see note to s. 8.

As to the relaxation of the provisions of the Police Act (V. of 1861) which restrict the employment of police-officers to the presidency, province, or place, of the police-establishment of which they are members, see the Police Act (III. of 1888), *infra*.

Compare also s. 3 (2) of the New Code of Criminal Procedure (Act V. of 1898).

The Chittagong Hill-tracts have been declared to be a general police district for the purposes of this Act, see the Chittagong Hill Tracts Regulation, 1900 (I. of 1900) s. 16.

The North-West Frontier Province has been declared to be a general police-district for the purpose of the Act, see the North-West Frontier Province Law and Justice Regulation 1901 (VII. of 1901) s. 13.

*Under s. 2 of the Police Act (III. of 1888), the Governor-General in Council, notwithstanding this provision, may create a general police-district consisting of parts of two or more presidencies, provinces or places.

†This definition of "District Superintendent" and "District Superintendent of Police" has been inserted by the police Act (1861) Amendment Act (VIII of 1895), s. 1.

‡Compare the definition of "Cattle" in s. 3 of the Cattle Trespass Act (I. of 1871).

2.* The entire police establishment under a Local Government shall, for the purposes of this Act, be deemed to be one police force† and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay as shall, from time to time, be ordered by the Local Government, subject “in the case of officers of the Indian police of and above the rank of Assistant Superintendent,”‡ to the sanction of the Governor-General of India in Council.

3. The superintendence of the police throughout a general Superintendence in the police-district shall vest in, and, subject Local Government, “in the case of officers of the Indian Police of and above the rank of Assistant Superintendent”** to the general control of the Governor-General of India in Council, shall be exercised by, the local Government§ to which such district is subordinate; and, except as authorized under the provisions of this Act, no person, officer, or Court, shall be empowered by the Local Government to appoint, supersede, or control any police functionary.

4. The administration of the police throughout a general Inspector-General of Po- police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Local Government shall seem fit.||

The administration of the police throughout the local jurisdiction of the Magistrate¶ of the district shall, under the general control and direction of such Magistrate; be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

*S. 2 so far as it relates to the provinces under the administration of the Lieutenant-Governor of Bengal, has been repealed by the Bengal Police Act (VII. of 1869).

†The police-force employed in cantonments is part of the general police-force under the Local Government. See the Cantonments Act (XIII. of 1889), s. 12.

‡The words within quotations have been inserted by Act 18 of 1920.

§Under s. 1 of the Chief Commissioner's Powers Act (XXXII of 1867), the powers of a Local Government under the police Act (V of 1861) have been delegated to the Chief Commissioners of Oudh, the Central Provinces, and British (now Lower) Burma—*See Gazette of India*, 1868, p. 358, 1869, p. 18.

As to Assam, see Notification No. 317, dated 12th September 1894, set out at p. 3 Assam Manual of Local Rules and Orders, Ed. 1893.

|| In the town of Calcutta the administration of the police vests in the “Commissioner of Police” [see s. 4 of Bengal Act IV. of 1866 (Calcutta Police)], and, in the suburbs, the Inspector-General of Police of Bengal is precluded from exercising any of the powers and authorities vested in him by this Act.—See s. 9 of Bengal Act IV. of 1884 (Howrah and Suburban Municipal Police).

¶ For rules and orders regarding powers of Magistrates and Commissioners in the North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. See also the Police Manual, s. 11.

The Inspector-General and other officers above-mentioned shall, from time to time, be appointed by the Local Government, and may be removed by the same authority.

NOTES.

The Magistrate of the District in whom are vested powers of general control and direction over the police in his district, may sanction prosecution under s. 125 (1) (a) Cr. P. C. 1898, for the offence of preferring a false complaint to the police.—6. P. R. 1910 Cr., = 5 Ind. Cas. 829.

5. The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may from time to time, be imposed by the Local Government.

6. [*Magisterial powers of police-officers.*] *Repealed by the Code of Criminal Procedure (Act X of 1882).*

7.* The appointment of all police-officers other than those mentioned in section 4 of this Act shall, under such rules† as the Local Government shall, from time to time, sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General, and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend, or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

“or may award any one or more of the following punishments to any police-officer who shall discharge his duty in a careless or negligent manner, or who by any act of his own, shall render himself unfit for the discharge thereof namely:—

() fine to any amount not exceeding one month's pay;

() confinement to quarters for a term not exceeding fifteen days with or without punishment drill, extra guard, fatigue, or other duty;

(c) deprivation of good-conduct pay;

*A person appointed to the Burma police-force under this section is a military police-officer within the meaning of the Burma Military Police Act (XV. of 1887).—Sec. 3 (1) of that Act

As to the disciplinary powers of a Commandant or Second-in-Command of Military Police in Burma over police-officers appointed under this section, see s. 12 *ibid.*

† For rules regarding the police-force in the central provinces, see Notification No. 3595, Central Provinces List of Local Rules and Orders, Ed. 1896. See also the Police Manual, Vol. I.

For rules and orders regarding powers of Commissioners and Magistrates in the United Provinces of Agra and Oudh, see U. P. List of R and O., and the Police Manual.

(d) removal from any office of distinction or special emolument.”*

NOTE.

An order for the suspension and confinement of a police officer for an unlimited period of time exceeding the limits laid down in Cl (b) is illegal. 2C.L.J.616 = 3Cr. L. 1, 110 see also 26 P. R. 1915.

8. Every police-officer so appointed shall receive, on his appointment, a certificate in the form annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers functions, and privileges of a police-officer.†

“Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

“A police-officer shall not, by reason of being suspended from office cease to be a police-officer. During the term of such suspension, the powers, functions, and privileges vested in him as a police-officer shall be in abeyance ; but he shall continue

*In s. 7, the portion quoted has been substituted for the words, “or fine any police-officer to any amount not exceeding one month’s pay who shall discharge his duty in a careless or negligent manner, or who by any act of his own, shall render himself unfit for the discharge thereof,” by the Police Act (1861) Amendment Act (VIII of 1895), s. 2.

†As to enrolment, maintenance and discipline of—

- (1) the Military Police force employed in—
 - (a) the Andaman and Nicobar Islands see the Andaman and Nicobar Islands Military Police Regulation (II. of 1888) ;
 - (b) Assam, see the Assam Military Police Regulation (IV. of 1890) ;
 - (c) Burma, see the Burma Military Act (XV. of 1887) ;
- (2) the Chittagong Hill Tracts Frontier Police, see the Chittagong Hill Tracts Frontier Police Regulation (III. of 1881) ;
- (3) the rural Police in the Districts of Cachar and Sylhet, see the Sylhet and Cachar Rural Police Regulation (I. of 1883) ;
- (4) the Punjab Frontier Police-officers, see the Punjab Frontier Police-officers Regulation (VII. of 1893) ;
- (5) the Calcutta and Suburban Police, see Bengal Act IV. of 1866 (Calcutta Police) and Bengal Act II. of 1866 (Calcutta Suburban Police) ;
- (6) the Police establishment in municipal areas in the North-Western Provinces and Oudh, see the N.-W. P. and Oudh Municipalities Act (XV. of 1883), ss. 49, to 53 ;
- (7) the Police establishment in municipal areas in the Punjab, see the Punjab Municipal Act (XX. of 1891), ss. 79 to 84.
- (8) Rural Police establishment in Santhal Parganas, see the Santhal Parganas Rural Police Regulation, 1900 (3 of 1900).

subject to the same responsibilities, discipline, and penalties, and to the same authorities, as if he had not been suspended."*

9. No police-officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent, or by some other officer authorized to grant such permission, or, without leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

10. No police-officer shall engage in any employment or office whatever, other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

NOTE.

"Any employment" include trade. 43 Ind. Cas 440.

11. [*Police Superannuation Fund.*] *Repealed by the Repealing Act (XVI. of 1874).*

12. The Inspector-General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and rules† as he shall deem expedient, relative to the organisation, classification, and distribution of the police-force; the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

13. It shall be lawful for the Inspector-General of police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the

*In s 8, the last two paragraphs quoted have been substituted for the original paragraph by the Police Act (1861) Amendment Act (VIII. of 1895), s. 3. That paragraph ran as follows :—

"Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the Police-force, and shall be immediately surrendered to the superior officer of such person, or to some other officer empowered to receive the same."

† For rules under s. 12 for :—

- (1) Bengal, See Bm. Stat. R and O. Vol. II.
- (2) Burma, See Bur. R. M. Vol. I.
- (3) Central Provinces, See Cent. Provs. R. and O.
- (4) Coorg, See Coorg R and O.
- (5) United Provinces of Agra and Oudh, See U. P. list of R. and O. Vol. I. and the Police Manual.

general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application.

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

14 Whenever any railway, canal, or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation, in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour, of the person employed upon such work, manufactory, or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue; and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory, or concern, for the payment of the extra force so rendered necessary and such person shall thereupon cause payment to be made accordingly.

15.* (1) It shall be lawful for the Local Government, by proclamation to be notified in the official Gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or, that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf, with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

*This section has been substituted for the original s 15 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 4.

(3) Subject to the provisions of sub-section (5) of this section the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same, and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the Local Government, by order to exempt any persons, or class or section of such inhabitants, from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force but it may be withdrawn at any time, or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct.

Explanation.—For the purposes of this section, “inhabitants” shall include persons who themselves, or by their agents or servants, occupy or hold land or other immoveable property within such area, and landlords who themselves, or by their agents or servants, collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein.

NOTE.

The High Court has no power to interfere with an order of a purely executive nature as when a Magistrate appointed special constable s. 17 Act V. of 1861 instead of proceeding under s. 15 to apply for sanction to an increase to the police force. 18 W. R. Cr. 67. As regards clause (4) vide 17 C. W. N. 315 = 17 C. L. J. 216.

15A* (1) If in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt, or loss of, or damage to, property, has been caused by, or has ensued from, the misconduct of the inhabitants of such area, or any class or section of them, it shall be lawful for any person, being an inhabitant of such area who claims to have suffered injury from such misconduct, to make, within one month from the date of the injury, or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district, or of the sub-division of a district ; within which such area is situated.†

* S. 15A has been inserted by the Police Act (1861) Amendment Act (VIII. of 1895) s. 5.

† As to rule Regulating proceedings in Burma under this section, see note (*) to section 46 (2) (b), *infra*.

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the Local Government, after such enquiry as he may deem necessary, and whether any additional police force has or has not been quartered in such area under the last preceding section, to—

- (a) declare the persons to whom injury has been caused by, or has ensued from, such misconduct,
- (b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them, and
- (c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section :

Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the Local Government, by order, to exempt any persons, or class or section of such inhabitants, from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by (the Commissioner of the Division or)* the Local Government, but, save as aforesaid, shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation*—In this section the word “inhabitants” shall have the same meaning as in the last preceding section.

16.† (1) All moneys payable under sections 13, 14, 15, and 15A, shall be recoverable by the Magistrate of the district in the manner provided by sections 386 and 387 of the Code of Criminal procedure, 1882, for the recovery of fines, or by suit in any competent Court.

*In the North-West Frontier Province the words in brackets are omitted, vide Reg. 7 of 1901.

†This section has been substituted for the original s. 16 by the Police Act (1861) Amendment Act (VIII, of 1895), s. 6.

(2) All moneys paid or recovered under sections 13, 14, and 15 shall be credited to a fund to be called "The General Police Fund," and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15A shall be paid by the Magistrate of the district to the persons to whom, and in the proportion in which, the same are payable under that section.

17. When it shall appear that any unlawful assembly or riot or disturbance of the peace, has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in the place where such unlawful assembly or riot, or disturbance of the peace, has occurred, or is apprehended, it shall be lawful for any police-officer, not below the rank of inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood, as such police-officer may require, to act as special police-officer, for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

NOTES.

Special Constable.—The circumstances with justify the appointment of special constables under this section are that a disturbance of the peace is apprehended and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place where the disturbance is apprehended. In the absence of these circumstances an order under this section is improper. 35 C. 454=12 C. W. N. 366; 12. C. W. N. 727; See also 43 C. 277=20 C. N. 855. As to High Courts powers of interference Vide 18 W. R. Cr. 67; 20 O. C. 229.

18. Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

19. If any person, being appointed a special police-officer as aforesaid, shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal, or disobedience.

NOTES

Refusal to accompany a police-officer to the police station to obtain the authority of appointment to serve as a special constable is not an offence under this section. 28c. 411=5 C W N 134 (But see 19 Cr. L. J. 91.) where the appointment is illegal under s. 17 there can be no conviction. 20C. W N 855.

20.* Police-officer enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act which shall hereafter be passed for regulating criminal procedure.†

NOTE

Police officer cannot exercise authority of a Magistrate U. B. R. (1892-96) Vol. I. p. 10.

21. Nothing in this Act shall affect any hereditary or other village officer, unless such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

If any police-officer appointed under Act XX. of 1856 to make Police chaukidar in the Presidency of Fort William. *better (provision for the appointment and maintenance of police chaukidars in Cities, Towns, Stations, Suburbs, and Buzars in the Presidency of Fort William in Bengal)* is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

22. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

23. It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public

*For some cases in which the application of s. 20 has been restricted, see the Assam Police-officers Regulation (II. of 1883), ss. 2 and 3; the Burma Military Police Act (XV. of 1887), s. 11, p. 68; and the Lower Burma Courts Act (XI of 1893), s. 101.

The section has been declared not to apply to any Assistant District Superintendent of Police whose duties are exercised in connection with the unenrolled border police-force—See s. 2 of the Punjab Frontier police-officers Regulation (VII of 1893), *Gazette of India* 1893, Pt. I., p. 285.

†See now Act V. of 1898.

nuisances; to detect and bring offender to justice, and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming-house, or other place of resort of loose and disorderly characters.

NOTES.

Duty to police-officer A police-officer is not bound to arrest a person against whom no proceedings have been directed, if he believes that he has not sufficient grounds for apprehending him, 26 W. R. Cr. 8, where a police-constable is asked to purchase bamboos and rafters he is not bound to obey that order under this section—A. W. N. 1891, 179.

There is no authority for the proposition that the Police are empowered to prevent only cognizable offences. Same colour is given to this proposition by s. 149, Code of Criminal Procedure, which provides only for the prevention of cognizable offences by the Police Act, 1861, appears to give wider powers for preventing offences in general, 17 Cr. L. J. 347=35 Ind. cas. 523.

24. It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence * * * *.

NOTES.

Vide 15 Ind. Cas 984=13 Cr. L. J. 568.

Police-officer to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal

25. It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

26. (1) The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

(2)† The provision of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section.

*The words, "and to prosecute such person up to final judgment" have been repealed by the Code of Criminal Procedure (Act X of 1882).

†This sub-section has been added by the Police Act (1861) Amendment Act (VIII. of 1895), s. 7. Read now the Criminal Procedure Act (V. of 1898).

27.* (1) If no person shall, within the period allowed, claim such property or the proceeds thereof, Confiscation of property if no claimant appears. if sold, it may, if not already sold under sub-section 2) of the last preceding section, be sold under the orders of the Magistrate of the district.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26, to which no claim has been established, shall be at the disposal of Government.

28. Every person having caused to be an enrolled police-officer under this Act who shall not Persons refusing to deliver up certificate, &c., on ceasing to be police-officers. forthwith deliver up his certificate, and the clothing, accoutrements, appointments, and other necessities which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

29. Every police-officer who shall be guilty of any violation of duty, or wilful breach or neglect of duty, &c. any rule or regulation, or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months; "or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave;"† or who shall engage, without authority, in any employment other than his police-duty; or who shall be guilty of cowardice; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both.

NOTES.

Jurisdiction.—The Magistrate alone not the Sessions Judge has jurisdiction to convict under s. 29. 9 W. R. Cr. 36; 22 A 340.

Violation of duty etc.—Before a police officer can be convicted of an offence under this section it must be found that he is guilty, not of mere neglect, but of deliberate and intentional violation of duty. 17 W. R. Cr. 34; 19 W. R. Cr. 7; 25 W. R. Cr. 20; 12C. 427; 10 C W N 322; A. W. N 1883, 42; A. W. N 1896, 105; 15 C. 194; 12 Cr. L. J 143; 56 Ind Cas 497; 21 Cr. L. J 465

*This section has been substituted for the original section by the Police Act (1861) Amendment Act (VIII. of 1895), s. 8. That section ran as follows :—

"If no person shall, within the period allowed, claim such property, it may be sold under the orders of the Magistrate of the District, and the proceeds shall be at the disposal of Government."

† To s. 29, the words quoted have been added by the Police Act (1861) Amendment Act (VIII. of 1895), s. 9.

Withdrawal from duty—The failure of a police officer to resume his duties on the expiration of leave does not constitute an offence under this section. 6 C. 625 = 8 CLR. 56 See also 10 CLR. 521; 6 A. 495; 10 A. 459; 96 P. R. 1866 Cr.; 10 C. W. N. 79 = 2 C. L. J. 556; 17 A. L. J. 873.

30.* (i) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such procession may pass.

(ii) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street, or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require, by general or special notice, that the person convening or collecting such assembly, or directing or promoting such procession, shall apply for a license.

(iii) On such application being made, he may issue a license specifying the names of the licensees, and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to the section.

Provided that no fee shall be charged on the application for, or grant of, any such license.

Music in the streets. (iv) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

NOTE.

A general order prohibiting singing is illegal L. B. R. (1893-1900) 394, 20 Cr. L. J. 213 = 49 Ind. Cas. 1067.

30A.† (1) Any Magistrate or District Superintendent of Police, or Assistant District Superintendent of Police, or Inspector of Police, or any police-officer in charge of a station, may stop any procession which violates the powers with regards to assemblies and procession violating condition of license.

*This section has been substituted for the original by the police Act (1861) Ammen-Act. (VIII. of 1895), s. 10. The original section ran as follows:

"The District Superintendent and Assistant District Superintendent of Police may, as occasion requires direct the conduct of all assemblies and processions of the public roads, or in the public streets or thoroughfares, and prescribe the routes by which and the times at which, such procession may pass.

"They may also regulate the use of music in the streets on the occasion of festivals, and ceremonies."

†S. 30A has been inserted by the Police Act (1861) Amendment Act (VIII. of 1895) s. 11

conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.

31. It shall be the duty of the police to keep order on the Police to keep order in public roads, and in the public streets, public roads, &c. thoroughfares, ghats, and landing-places and at all other places of public-resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghat, or landing-place may be thronged, or may be liable to be obstructed.

32. Every person opposing or not obeying the orders issued under the last three* preceding sections, Penalty for disobeying orders issued under last three sections, &c. or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

NOTE—Vide 14 A.L.J. 1072 = 35 Ind.Cas. 1008 ; 20 Cr. L. J. 313.

33. Nothing in the last four† preceding sections shall be Saving of control of Magistrate of district. deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

34. Any person who, on any road, or in any "open place Punishment for certain or"‡ street or thoroughfare, within the offence on roads, &c. limits of any town§ to which this section shall be specially extended|| by the Local Government,

*"Three" has been substituted for "two" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 12.

†"Four" has been substituted for "three" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 12.

‡In s. 34, the words quoted have been inserted by the Police Act (1861) Amendment Act (VIII. of 1895), s. 13.

§"Town" here includes a cantonment.—See the Cantonments Act (XIII. of 1889), s. 12 (2).

||For list of the towns to which this section has been specially extended in—

(1) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, pp. v.—vii.;

commits any of the following offences to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents *or*^{*} passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment, "with or without hard labour"[†] not exceeding eight days; and it shall

Power of police-officers. be lawful for any police-officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely :—

First.—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.

Cruelty to animals. *Second.*—Any person who wantonly or cruelly beats, abuses or tortures any animal.

Third.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

Exposing goods for sale. *Fourth.*—Any person who exposes any goods for sale.

Fifth.—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap or the like.

Being found drunk or riotous. *Sixth.*—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

(2) Burma, see Appendix A to the Burma Laws List, Ed. 1897.

(3) Central Provinces, see the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 10;

(4) North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 16 to 31.

(5) For an instance of the extension of the section to a town in Bengal, see Notification No. 1077-J.D., dated 10th October 1897, *Calcutta Gazette*, 1897. Pt. I. p. 1321. It was extended to the towns of Ajmere and Beawar by Notification No. 426-A dated 26th April 1865 See *N. W. P. Gazette*, 1865 p. 207.

In the Presidencies of Madras and Bombay there are separate Acts.—See note to s. 46.

* In s. 34, the italicized word "*or*" has been substituted for the word "*and*" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 13.

† In s. 34 the words quoted have been inserted by Act I. of 1903,

Seventh.—Any person who wilfully and indecently exposes Indecent exposure of his person or any offensive deformity or person. disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Neglect to protect *Eighth.*—Any person who neglects dangerous places. to fence in, or duly to protect, any well, tank, or other dangerous place or structure.

Notes.

Scope—The words "open places" coupled with "road" "street" or "thoroughfare" must not be interpreted *egis dem generis*. The addition of the words "open place" by the Amending Act (VIII of 1895) gives the section a wider significance, and this shown by another amendment in the same section made at the same time, in which the annoyance etc caused must not be to the "residents and passengers," but to "residents or passengers." The intention of the legislature was, therefore, to extend the section not only to passengers who would be on such a road, street, or thoroughfare but also to residents, who are not passengers—27C. 655. A Municipal bazar is not a thoroughfare [U. B. R. (1892—96) Vol I 296] Unless it is proved that an act complained of was to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers, there cannot be a conviction under s. 34 of the Police Act—57 Ind Cas. 346 = 20 Cr. L. J 452; see also 20 Cr. L. J 671; 2 N. W. P 5; 4 A. L. J 44; A. W. N. 1887, 67 and 34 Ind Cas 993.

35. * * * * * Any charge against a police officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act :

Provided that no person shall be punished twice for the same offence.

Note—Vide 7 Cr. L. J. 291.

37. The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code, and of sections 386 to 389, both inclusive, of the Code of Criminal Procedure, 1882,† with respect to fines, shall apply to penalties and fines imposed under this Act, on conviction before a Magistrate.

* The words, "In all cases of conviction under this Act, the officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict: Provided that," repealed by the Code of Criminal Procedure (Act X of 1882), have here been omitted.

Provided that, notwithstanding anything contained in section 65 of the first-mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.*

38. [*Procedure until return is made to warrant of distress*] *Repealed.*—See the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

39. [*Imprisonment if distress not sufficient.*] *Repealed.*—See the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

40. [*Levy of fines from European British subjects.*] *Repealed.*—See the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

41. All sums paid for the service of process by police-officers, Reward to police and all rewards, forfeitures, and penalties, which by law are payable to informers, shall, when the information is laid by a police-officer, be paid into the General Police Fund.†

42. *All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise; || and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.*

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action.

* This section has been substituted for the original s. 37, and for ss. 38, 39, and 40 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

† Read now the new Code of Criminal Procedure (Act V. of 1898).

‡ See as to this fund, s. 16, *supra*.

|| So much of s. 42 (*i. e.*, the portion in *italics*) as relates to the limitations of suits has been repealed by the Indian Limitation Act (IX. of 1877).

Provido, Provided always that no action shall
in any case lie where such officers shall
have been prosecuted criminally for the same act.

Notes.

Scope—The prosecutions referred to in the section are acts done or purporting to be done by a police officer and not for acts done apart for the execution of this duty U B R (1897-1901) Vol. I. 365. This section has no bearing or connection with s. 29.—7 N W. P. 237. A prosecution instituted more than three months after the offence is barred by this section. 36P. R. 1870 Cr.

43.* When any action or prosecutions shall be brought, or
Plea that act was done any proceedings held, against any police-
under warrant. officer for any act done by him in such
capacity, it shall be lawful for him to plead that such act was
done by him under the authority of a warrant issued by a
Magistrate.

Such plea shall be proved by the production of the warrant
directing the act, and purporting to be signed by such Magis-
trate, and the defendant shall thereupon be entitled to a decree
in his favour, notwithstanding any defect of jurisdiction in such
Magistrate. No proof of the signature of such Magistrate shall
be necessary, unless the Court shall see reason to doubt its being
genuine :

Provided always that any remedy which the party may have
against the authority issuing such warrant
Proviso. shall not be affected by anything
contained in this section.

44. It shall be the duty of every officer in charge of a police-
station to keep a general diary in such
Police-officers to keep station to keep a general diary in such
diary form as shall, from time to time, be pre-
scribed by the Local Government, and to record therein all com-
plaints and charges preferred, the names of all persons arrested,
the names of the complainants, the offences charged against them,
the weapons or property that shall have been taken from their
possession or otherwise, and the names of the witnesses who
shall have been examined.

The Magistrate of the district shall be at liberty to call for
and inspect such diary.

* A Commandant or Second-in-command of Military Police in Burma is entitled to the privileges which a police officer has under sections 42 and 43.—See the Burma Military Police Act (XV, of 1887), s. 13.

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

46.* (1) This act shall not by its own operation take effect in any presidency, province, or place.†
 Scope of Act. But the Governor-General in Council, by an order to be published in the Gazette of India, may extend the whole or any part of this Act to any presidency, province, or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take in such presidency, province, or place.

* This section has been substituted for the original s 46 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 15. That section was as follows:—

‘46. This Act shall not take effect in any presidency, province, or place unless the same shall be extended to such presidency, province, or place by the Governor-General of India in Council by an order to be published in the *Government Gazette*.

“When the Act shall have been so extended, it shall be carried into effect in such presidency, province, or place as the Local Government, by an order to be published in the official Gazette shall direct.”

† In the Madras and Bombay presidencies, there are special Police Acts see Act XXIV. of 1859, and Bombay Acts VII. of 1867 and IV of 1890; and, in the Lower Provinces of Bengal, Bengal Act VII. of 1869, is to be read and taken as part of Act V. of 1861. (see s. 6 of the former Act). But, for the purposes of s. 2 of the Police Act (III. of 1888), and notwithstanding s. 46 of this Act, the Act of 1861 shall be deemed to take effect throughout British India—see s. 2 (6) of Act III, 1888.

For notifications extending this Act under the power conferred by the old section to—

- (1) the North-Western Provinces, including Ajmere Merwara then under that Government, see Notification No. 964 in the *North-Western Province Gazette*, 1861. p. 634.

For order as to enforcement of the Act in 27 districts in the North-Western Provinces, in Hamirpur, Jalaun, Jhansi, Lalitpur, Naini Tal (including the Tarai paraganas), and Almora and Garhwal issued under the old s. 46, para 2 (after the Act had been extended under para. 1 of that section to the whole province) see Notifications noted at pp. 31 and 32 of the North-Western Provinces and Oudh list of Local Rules and Orders, Ed. 894. These orders are kept in force by s. 16 of Act VIII. of 1895.]

- (2) Oudh see Notification No. 34 in the *North-Western Provinces Gazette*, 1861 p. 1758;

- (3) tract of land between Allahabad and Jubbulpore ceded in full sovereignty by certain Native States, see Notification No. 205-F., at page 13 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

- (4) Districts in Burma—

(a) Pegu [now the “Pegu and Irrawaddy Divisions,” see *Burma Gazette*, 1881, pt II., p. 98; Notification No. 946] see Notification No. 1453, *Burma Gazette*, 1861, Pt. I., p. 2340,

(b) } Tenasserim } see Notification No. 1906, *Burma Gazette*, 1861, Pt. I., p. 3189;
 Martaban }

(c) Arakan, see Notification No. 571, *Burma Gazette*, 1864, Pt. I. p 45;

- (5) the Central Provinces—for extension of the Act to the Provinces of Nagpur, Sironcha, Sambalpur, Nimar Bijeraghoghar, see list of Local Rules and Orders, Ed 1896, p 4,

(2) When the whole or any part of this Act shall have been so extended, the Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act ;

(b) to prescribe the time, manner, and conditions within and under which claims for compensation under section 15A* are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries, if necessary) which are to be taken consequent thereon ; and

(c) generally for giving effect to the provisions of this Act.

(3) All rules made under this Act may, from time to time, be amended, added to, or cancelled by the Local Government.

47. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the Authority of District Superintendent of Police over village police, territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village-watchman or other village police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.†

(6) Bengal and Assam—that is the Provinces comprised in the Lieutenant-Governorship of Bengal, of which the various districts now forming the Chief Commissionership of Assam then formed part see Notification No. 1871, set out at p. 3 of the Assam Manual of Local Rules and Orders, Ed. 1893 ;

(7) Several districts in the Punjab, see Notification No. 971, dated 15th May 1861, *Cantonment Gazette*, 18th May 1861, p. 1302.

Under the power conferred by the section as it now stands it has been extended as follows to—

(1) Upper Burma (except the Shan States), Notification No. 619, *Burma Gazette*, Pt. II., p. 265 ;

(2) Madras Sections 15, 15A, 16, 30, 30A, 31, and 32 of the Act have been extended to the whole of the Madras Presidency See Notification No. 728, dated 31st October 1895, *Gazette of India*, Pt. I., p. 876.

(3) Eastern Dvars in the District of Goalpara, see Notification No. 230, *Gazette of India*, 1897, Pt. I., p. 198.

For list of provinces and districts to which the Act has been extended by special enactments, see note (1) on p. 1 *supra*

*For rules regulating proceedings in Burma under s. 15A see Notification No. 266, *Burma Gazette*, 1895, Pt. I., p. 448.

† For powers conferred under this section in—

(1) the Central Provinces, see Notification noted at p. 14 at the Central Provinces

FORM.

(See Section 8)

A B. has been appointed a member of the police-force under Act V. of 1861, and is vested with the powers, functions, and privileges of a police-officer.

ACT NO. III. OF 1888.*

The Police Act, 1888,

RECEIVED THE G-G.'S ASSENT ON THE 17TH FEBRUARY 1888.

An Act to amend the Law relating to the Regulation of Police.

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of police-officers to the presidency, province, or place of the police-establishment of which they are members ; It is hereby enacted as follows :—

Title, extent, and commencement.

1. (1) This Act may be called "The Police Act, 1888."

(2) It extends to the whole of British India,†

(3) It shall come into force at once.

List of Local Rules and Orders, Ed. 1896 ;

- (2) Assam in the district of Kamrup, Darrang, Sibsagar, Khasi, and Jaintia Hills Nowgong, Goalpara, Lakhimpur, see Bengal Government Notification No. 1862, set out at p. 6 of the Manuals of Local Rules and Orders relating to Assam, Ed. 1893.

* For Statement of Objects and reasons, see *Gazette of India*, 1888, Pt. V., p. 130, for Report of the Select Committee, see *ibid*, 1888, Pt. IV. p. 8 ; and for Proceedings in Council, see *ibid*, 1887, Pt. VI, p. 100 and *ibid*, 1888, pp. 37 and 40.

Act III of 1888 has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the districts of Hazaribagh, Lohardaga, Manbhum, and Palamau, and in Pargana Dhalbhum and the Kolhan in the Singhbhum District.—See *Gazette of India* 1805 Pt. I, p. 130.

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898.)

It had been previously extended there by notification under s. 5 of Act XIV. of 1874.—See *Gazette of India* 1892 Pt. I., p. 94.

† Here certain words have been omitted by Act X. of 1914.

2. (1) Notwithstanding anything in Act XXIV. of 1859 (an Act for the better regulation of the police-^{Constitution of police-} forces for special purposes. ^{within the territories subject to the Presidency of Fort St. George),} Act V. of 1861 (an Act for the regulation of police), "or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council,"* or any Act relating to the police in any presidency-town the Governor-General in Council may, by notification in the Gazette of India, create a general police district embracing parts of two or more presidencies, provinces, or places, and direct the enrolment under Act V. of 1861, of a police-force for service therein.†

(2) With respect to such a district and the police-force enrolled therefor, the functions of the Local Government under Act V. of 1868, the Code of Criminal Procedure, 1882,‡ and any other enactment for the time being in force relating to police, shall, subject to any orders which the Governor-General in Council may make in this behalf, be discharged by the Governor-General in Council, or by such Local Government or other authority as the Governor-General in Council may appoint,† and the functions of the Inspector-General of Police, Deputy Inspectors-General, Assistant Inspectors-General, District Superintendents of Police, and Assistant District Superintendents under Act V. of 1861, and any other enactment for the time being in force, shall, subject as aforesaid, be discharged by such officer or officers as may be appointed by the authority ordinarily discharging under this sub-section the functions of the Local Government with respect to the district and force.

(3) Subject to any orders which the Governor-General in Council may make in this behalf, members of a police-force enrolled for service in a general police-district created under sub-section (1) shall have, within every part of any presidency, province, or place, of which any part is included in the district, the powers, duties, privileges, and liabilities, which, as police-officers appointed under Act V. of 1861, they have within the district.

(4) Any member of such a force whom the authority ordinarily discharging with respect thereto the functions of the Local Government under sub-section (2) has generally or specially empowered to act under this sub-section may, subject to any orders which the Governor General in Council may make in this behalf, exercise in any part of the local area in which he has the

* In s. 2 (1), the words quoted have been substituted for the words, "The Bombay District Police Act, 1867," by the second schedule to the Repealing and Amending Act (XII. of 1821) - See now the Bombay District Police Act (Bom. Act IV. of 1890)

† For notification issued under these powers, see *Gazette of India*, 1892, 1896, and 1898, Pt. I., pp. 44, 374, and 130, respectively.

‡ See now the Code of Criminal Procedure (Act V. of 1898).

powers of a police-officer under sub-section (3) any of the powers which an officer in charge of a police-station has in that part, and when, so exercising any such power, shall, subject as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

(5) Subject to any orders which the Governor-General in Council may make in this behalf, a part of a presidency, province, or place included in a general police-district under sub-section (1), shall not, by reason of being included therein, cease, for the purposes of any enactment relating to police, to be part of the presidency, province, or place of which it forms part.

(6) For the purposes of this section, and subject to the provisions thereof, Act V. of 1861 shall, notwithstanding anything in section 46 of that Act, be deemed to take effect throughout the whole of British India.

3. Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to any orders which the Governor-General in Council may make in this behalf, a member of the police-establishment of any presidency, province, or place may discharge the functions of a police-officer in any part of British India beyond the limits of the presidency, province or place, and shall, while so discharging such functions, be deemed to be a member of the police-establishment of that part, and be vested with the powers, functions, and privileges, and be subject to the liabilities of a police-officer belonging to that establishment.

ACT XVI. OF 1861.**The Stage-carriages Act, 1861.***

RECEIVED THE G.-G.'S ASSENT ON THE 7TH JULY 1861.

An Act for licensing and regulating Stage-carriages.

Preamble.

Whereas it is expedient to license and to regulate stage-carriages in British India, It is enacted as follows.—

1. Every carriage drawn by one or more horses†, which shall ordinarily be used for the purpose of conveying passengers for hire or from any place of British India, shall, without regard to the form or construction of carriage, be deemed to be a stage-carriage within the meaning of this Act.‡

2. No carriage shall be used as a stage-carriage unless licensed by a Magistrate† or by the Commissioner of Police of a Presidency-town.

3. The Magistrate or || Commissioner of police to whom the application for a license of a stage-carriage is made may refuse to license the same, if he shall be of opinion that such stage-carriage is unserviceable, or is unsafe, or unfit for public accommodation or use.

If a Magistrate or || Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name

* See 2 & 3 Wm. IV., c. 120; 3 & 4 Wm. IV., c. 48; 5 & 6 Vict., c. 79, 10 & 12 Vict., c. 42; 11 & 12 Vict., c. 118, s. 2.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

Act XVI. of 1861 [as amended by the Stage-carriages Act (1861) Amendment Act (I. of 1898)] has been declared to apply to the whole of British India, but not, so as to supersede or contravene provisions of local laws dealing with the same subject.—See Act XVI of 1876, s.22. For local laws, see Bom Act VI of 1863, and Mad Act III. of 1879, and Ben Act II. of 1891. It is declared in force in Baluchistan by Reg. 2 of 1913

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled District namely

The Districts of Hazaribagh, Lohardagga, and Manbhum, and Pargana Dhalbhum, and the

Kolhan in the District of Singhbhum ... See *Gazette of India* 1881, Pt I, p 504.

The North-Western Provinces Tarai ... Ditto 1876, Pt I, p 505.

It has been declared by notification under s. 3(a) of the Santhal Parganah Justice and Laws Regulation, 1899 (3 of 1899) to be in force in the Santhal Pargana Vide *Calcutta Gazette*, 1901, Pt I., p. 301.

†For definition see s. 21, *infra*

‡The proviso to s. 1 has been repealed by s. 2 of the Stage-carriage Act (1861) Amendment Act (I of 1898). The proviso ran as follows: Provided that this Act shall not apply to carriages not ordinarily used for journeys of a greater distance than 20 miles "

|| The word "chief" here has been omitted by Act X of 1914.

and residence of the proprietor of the stage-carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed.

4. [For every such license there shall be paid by the proprietor of the stage-carriage the sum of five rupees or such less sum as the Local Government may fix, and such license shall be in force for one year from the date thereof.]*

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the license for the name of the former proprietor without any further payment for that year, and every person who appears by the license to be the proprietor shall be deemed to be such proprietor for all purposes of this Act.

NOTE.

For scale of fees fixed by the Chief Commissioner North-Western Frontier Province *Vide Gazette of India*, 1904, Part II., p. 354.

5. On any stage-carriage being licensed, the proprietor thereof shall cause the number of the license and all other particulars of the license to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage.

6. The proprietor of any licensed stage-carriage, who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in the last preceding section, shall be liable to a fine not exceeding one hundred rupees.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

8. Any proprietor, or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses, or who knowingly permits a larger number of passengers, or a greater weight of luggage, than provided by license,

* This paragraph has been substituted for the original paragraph by the Stage-carriages Act (1861) Amendment Act (I. of 1898), s 3. The original paragraph was identical with the paragraph as it now stands, save that it did not contain the words "or such less sum as the Local Government may fix" after the word rupees.

to be carried by such stage-carriage than shall be provided by the license, shall be liable on a first conviction, to a fine not exceeding one hundred rupees, and, on any subsequent conviction, to a fine which may extend to five hundred rupees.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight luggage than shall be provided by the license, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution, and had made reasonable provision, to prevent the commission of the offence.

9. Any person who shall cruelly beat, ill-treat, over-drive
 Penalty for ill-treating abuse, torture, or cause, or procure to
 animals. be cruelly beaten, ill-treated, over-
 driven, abused, or tortured, any horse employed in drawing,
 or harnessed to, any stage-carriage, or who shall harness to or
 drive in any stage-carriage any horse which, from sickness,
 age, wounds, or other cause, is unfit to be driven in such stage-
 carriage, shall, for every such offence, be liable to a fine not
 exceeding one hundred rupees.

10. Any Magistrate or* Commissioner of Police within the
 local limits of whose jurisdiction any
 Revocation of license. stage-carriage shall ply, or who has grant-
 ed the license of any stage-carriage, if it shall appear to him
 that such stage-carriage, or any horse or any harness used with
 such carriage, is unserviceable or unsafe, or otherwise unfit for
 public accommodation or use.

11. In any station or place in which a Magistrate shall
 reside and be, any police-officer may,
 Penalty for not conform- ing to provisions of section
 5. in any place within two miles of the
 office of such Magistrate, seize any
 stage-carriage with the horse harnessed thereto, if the full particu-
 lars of the license of such stage-carriage be not distinctly
 painted on such stage-carriage in the manner provided in section
 5 of this Act.

Such carriage, with the horse harnessed, shall be taken with-
 out delay by such police-officer before such Magistrate, who shall
 forthwith proceed to hear and determine the complaint of such
 police-officer; and if, thereupon, any fine is imposed by such
 Magistrate, and such fine is paid, such stage-carriage and horse
 shall be immediately released; and if such fine be not paid

* The word "chief" has been omitted by Act X of 1914.

such stage-carriage and horse may be detained for twenty days as security for the payment thereof ; and if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale ; and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse ; and, if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

12. If any driver of any stage-carriage, or any other person having the care thereof, shall, through Penalty for misconduct on part of drivers. intoxication, neglect, or by wanton or furious driving, or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

13. Whenever the driver of any stage-carriage, or the owner of any horse employed in drawing any stage-carriage, shall have committed any offence against this Act for the commission whereof any Penalty when recoverable from proprietor. penalty is by this Act imposed, other than an offence specified in section 8, and such driver or owner shall not be known, or being known, cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed :

Provided that, if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found.

14. Whenever any charge is made before any Magistrate of any offence under this Act on which Issue of summons. it is necessary to issue a summons to

the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may transmit such summons by letter-post, which shall be deemed to be good service thereof.

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

15. All penalties incurred under this Act shall be adjudged by a Magistrate or Chief Commissioner of Police as aforesaid, and orders made under this Act by such Magistrate or Chief Commissioner of Police shall be final.

16. All penalties imposed under this Act, or any balance or any fine, costs or charges as mentioned in section 11 of this Act, may in case of non-payment or none recovery thereof be levied by distress and sale of the movable property of the offender by warrant under the hand of the Magistrate who imposed the same.

17. In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

18. If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate, by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

19. If the offender shall be European British subject, the Magistrate shall record the facts and costs from European British subjects. transmit such record to the District Court of the district wherein the offender is convicted, and the amount of the penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

20. On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

20A.* (1) The Local Government may, by notification in the official Gazette, make rules to carry out the purposes and objects of this Act in the territories under its administration or any part of the said territories.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may—

- (a) prescribe forms for licenses under this Act, the sums payable for the same, and the conditions on which they may be granted, and the cases in which they may be revoked ;
- (b) provide for the inspection of stage-carriages, and of the animals employed in the drawing them ; and
- (c) regulate the number and length of the stages for which animals may be driven in stage-carriages and the manner in which they shall be harnessed and yoked.

(3) In making any rule under this section the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

NOTES

For rules under section 20 A for

- (1) Punjab see *Punjab Gazette*, 1907 Pt. I p. 299
- (2) Bengal Vide Beng. Stat. R. and O. Vol. II.
- (3) Bombay Vide Bom. R. and O. Vol. I.
- (4) Madras Vide Madras R. and O. Vol. I.
- (5) Ajmer—Merwara Vide Aj. R. and O.

For notification prescribing fees in the Punjab Vide *Punjab Gazette*, 1904 Pt. I, p. 84 and 1907 Pt. I, p. 300.

21. The term "Magistrate" in this Interpretation-clause Act shall include all Magistrates and other persons exercising the powers of a Magistrate :

The term "British India" in this Act shall denote the territories that are or shall be vested in Her Majesty by the Statute 21 & 22 Vict., c. 106, entitled "an Act for the better government of India :"

* Section 20A has been inserted by Act I, of 1898, s. 4.

All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India :*

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.†

22.‡ This Act, as amended by subsequent Acts, extends to the whole of British India ; but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation is for the time being in force.

23.‡ The Local Government may, by notification in the official Gazette, exempt any carriages or class of carriages from all or any provisions of this Act.

NOTES.

For notification exempting tongas on the Kalka Simla Road from all the provisions of the Act Vide *Punjab Gazette*, 1904 Pt. I. p. 80, and also see *Gazette of India*, 1904 Pt. II, p. 534 for exempting all vehicles in good by the Railway authorities for passengers from Khushalgar West to Khushalgar East

* See Act XVI of 1876, s. 1.

† Here certain words have been repealed by Act X of 1914.

‡ Section 22 and 23 have inserted by Act I, of 1898, s. 4.

ACT III. OF 1862.

The Government Seal Act, 1862.*

RECEIVED THE G.-C.'S ASSENT ON THE 28TH FEBRUARY 1862.

An Act to amend the law relating to the use of a Government Seal.

Whereas it is expedient to adapt the law relating to the use of a Government Seal to the present form of the Government in India; It is enacted as follows. —

Whenever it is required by any regulation of a Local Government Seal to be used instead of or by any Act of the Governor-General of India in Council, that the seal of the East India Company shall be affixed on behalf or by the authority of the Government to any instrument or document, it shall be lawful, if the seal is to be affixed on behalf or by the authority of a Local Government, to affix, in lieu of the seal of the East India Company, a seal bearing the designation of such Local Government, or, if the seal is to be affixed on behalf or by the authority of the Government of India, a seal bearing the inscription "Government of India;" and such instrument or document so sealed shall, to all intents and purposes, be as valid and effectual as if the seal so used had been that of the East India Company.†

-
- *This title has been given by the Indian Short Titles Act (XIV of 1897).
 Act III. 1862 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Local Laws Extent Act (XV of 1874). s 3
 It has been declared to be in force by the Scheduled Districts Acts (XIV of 1874),
 3 (a), in the following Scheduled Districts:—
 West Jalpaiguri and the West Dvars See *Gazette of India*...1881, Pt. I, p 74.
 The Districts of Hazaribagh, Lohardagga
 and Manbhum, and Pargana Dhalbhum
 and the Kolhan in the District of Sing-
 bhum Ditto ...1881, Pt. I., p. 504
 The Scheduled portion of the Mirjapur
 District Ditto ...1879, Pt. I., p 383
 Jaunsar Bawar Ditto ...1879, Pt. I., p 382
 The Districts of Hazara, Peshawar, Dera
 Ismail Khan, and Dera Ghazi Khan ... Ditto ...1866, Pt. I., p 48.
 The District of Sylhet Ditto ...1876, Pt. I., p. 631.
 The rest of Assam (except the North
 Lushai Hills) Ditto ...1897, Pt. I., p. 299.
 It has been extended, by the last mentioned Act, to the Scheduled Districts of
 Kumaon and Garhwal—See *Gazette of India*, 1876, Pt. I., p. 606.
 It has been declared, by the same Act, not to be in force in the Scheduled District
 of Lahaul.—See *Gazette of India*, 1886 Pt. I., p. 306.
 The Scheduled Districts in Ganjam and Vizagapatam Vide *Gazette of India*, 1898,
 Pt. I., p. 870.

† Legislation on this subject was originally suggested in order to meet a difficulty respecting the seal to be used under Act XIX. of 1838 (*for the registration of coasting vessels in the Bombay Presidency*), section 8 of that Act requires the certificates of registry 'shall be sealed with the seal of the East India Company,' and the Government of Bombay were advised by their law-officers that no other seal could properly be used for such certificates until some Act should be passed "prescribing the seal to be used in lieu of the seal of the East India Company."—*Statement of Objects and Reasons.*

ACT XVI. OF 1863.

~~The~~ Excise (Spirits) Act, 1863 *

RECEIVED THE G.-G'S ASSENT ON THE 10TH MARCH 1863

An Act to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry.†

Whereas it is expedient to make special provision for the levy of the excise duty payable on spirits used exclusively in arts and manufactures or in chemistry ; It is enacted as follows:—

1. Spirits intended to be used exclusively in arts and manufactures or in chemistry may be removed from any licensed distillery in any

*This title has been given by the Indian Short Titles Act (XIV of 1897).

The Act XVI. of 1863 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Local Laws Extent Act (XV. of 1874), s. 3.

It has been declared to be in force in the following Scheduled Districts by the Scheduled Districts Act (XIV. of 1874)

Sindh	...	...	...	See <i>Gazette of India</i> ,	...	1880, Pt. I., p. 672.
Aden	...	...	...	D to	...	1879, Pt. I., p. 434.
West Jalpaiguri	...	...	...	D to	...	1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	...	...	...	Ditto	...	1881, Pt. I., p. 504.
The North-Western Provinces Tarai	...	...	...	Ditto	...	1876, Pt. I., p. 505.
The scheduled portion of the Mirzapur District	...	...	...	Ditto	...	1879, Pt. I., p. 383.
Jaunsar Bawar	...	...	...	Ditto	...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	...	...	D to	...	1886, Pt. I., p. 48.
The District of Sylhet	...	...	...	Ditto	...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills	...	...	...	Ditto	...	1897, Pt. I., p. 299.
The whole of Upper Burma (except the Shan States)	...	...	...	by Burma Laws Act, 1898,	...	(XIII. of 1898).

It has been extended, under the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled Districts of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

It has also been declared to be in force in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. 1899), s. 3, in Angul and the Khondamals by Reg. (I. of 1894), s. 3, and in Upper Burma (except the Shan States) by Act (XIII. of 1898) s. 4.

†Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874. But it is repealed (in Bengal Presidency, in Behar and Orissa except the Santhal Parganas and locally in Assam) by Ben. Act 5 of 1909 and E. B. and A. Act 1 of 1910, repealed (in United Provinces) by U. P. Act 4 of 1910; repealed (in Punjab) by Punj. Act 1 of 1914; repealed (locally in Madras) by Mad. Acts 1 of 1886 and 1 of 1913; repealed (in Bombay Presidency) by Bom. Act 12 of 1912 and repealed (in Central Province) by C. P. Act 2 of 1915.

part of British India on payment 1 Act, 1862.*
per cent. on the value of the spirits:

Provided that no spirits shall be so removed until FEBRUARY 1862.

Proviso. been effectually and permanently rendered unfit for human consumption.

2. The Board of Revenue, or other authority specially autho-

Rules for ascertaining rized in that behalf by the Local Govern-
that spirits to be removed ment, shall prescribe from time to
have been rendered unfit time, subject to the approval of the Local
for human consumption, &c. Government, rules

for ascertaining and determining that spirits proposed to be removed for the purposes aforesaid have been effectually and permanently rendered unfit for human consumption, as required by section 1 of this Act;

for causing such spirits to be so rendered, if necessary, by its own officers, at the expense of the person who wishes to remove them; and

for fixing the value of the spirit on which the *ad-valorem* duty shall be levied.

NOTE.

For rules made under this section for—Bengal (denaturalized spirits) Vide *Calcutta Gazette*, 1909, Pt. I, p. 100; Madras Vide Fort St. George Gazette 1908 p. c II p. 357; Burma Vide Bur. R. M., Vol. I.

3. Every person who shall wilfully contravene any rule

Penalty for breach of prescribed by the Board of Revenue,
such rules. or other authority as aforesaid, under
the last preceding section of this Act, shall be liable, on con-
viction before any officer exercising the powers of a Magistrate;
to a penalty not exceeding five hundred rupees for every such
offence.

Penalty for attempting to
render fit for human con-
sumption spirits removed
under Act.

4. Every person who shall attempt
or shall connive at an attempt, to render
fit for human consumption spirits re-
moved from a distillery under the
provision of this Act, shall be liable to a penalty not exceeding
thousand rupees;

and the possessor of such spirits on which such attempt has been made, or which may have been rendered fit for human consumption, shall be liable, on conviction before any officer exercising the powers of a Magistrate, to a penalty not exceeding five hundred rupees.

*The words quoted have been substituted for the words "calculated at ten" by the Indian Tariff Act (VIII, of 1894), s. 6.

to imposed under either of the last two preceding sections may, in case of non-payment, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of the officer by whom such penalty was imposed.

6. In case any such penalty shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody, until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

7. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty and the same shall not be forthwith paid, or

in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to the civil jail, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months, when the amount shall not exceed one hundred rupees and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

8. [*Provisions of s. 11, Act III, 1852, relating to adulteration, not to apply to spirits rendered unfit for consumption under Act] Repealed by Act XII. of 1891, s. 2 (1).*

9. In every case of conviction under section 3 or section 4 of this Act, the liquor or spirits with the cask or vessel containing the same, and the cart, boat, and animal, or animals employed in carrying such liquor or spirit, shall be liable to confiscation.

ACT XX. OF 186

Religious Endowments Act, 186

RECEIVED THE G.-G'S ASSENT ON THE 10TH MARCH 1

An Act to enable the Government to divest itself of the management of Religious Endowments.

WHEREAS it is expedient to relieve the Boards of Revenue and the Local Agents, in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX., 1810, of the Bengal Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Kator and other public buildings; and for the custody and disposal of Nazul Property or Escheats), and Regulation VII., 1817, of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges, or other public purposes; for the maintenance and repair of Bridges; Choultries, or Chattirams, and other public buildings and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of Mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments;† It is enacted as follows:—

1. [Repeal of parts of Bengal Regulation XIX. of 1810 and

*Act XX. of 1863 has been extended to Canara by Bom. Act VII. of 1865.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

S. 22 applies to the whole of British India.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum ... See <i>Gazette of India</i> ... 1881, Pt. I., p. 504.			
The scheduled portion of the Mirzapur District ... Ditto ... 1879, Pt. I., p. 383.			
Jaunsar Bawar ... Ditto ... 1879, Pt. I., p. 382			
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan ... Ditto ... 1886, Pt. I., p. 361.			
The Chief Commissionership of Assam (except the North Lushai Hills) ... Ditto ... 1897, Pt. I., p. 299.			
It has been extended under the same Act, to the following Scheduled Districts:—			
Kumaon and Garhwal ... See <i>Gazette of India</i> ... 1876, Pt. I., p. 606.			
The North Western Provinces Tarai ... Ditto ... 1876, Pt. I., p. 505.			
Ajmere and Merwara ... Ditto ... 1877, Pt. I., p. 605.			
The Scheduled Districts in Ganjam and Vizagapatam ... Ditto ... 1898, Pt. I., p. 870.			
Assam (except the North Lushai Hills) ... Ditto ... 1897, Pt. I., p. 299.			
†Certain words, which were repealed by Act XVI. of 1874, have been omitted.			

VII. of 1817.] Repealed by Act XIV. of

use.

2 In this Act—

importing the singular number shall include the plural,
and words importing the plural number
shall include the singular.*

the words "Civil Court" and "Court" shall mean the principal Court of original civil jurisdiction in the district in which the mosque, temple, religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provision of this Act.

3. In the case of every mosque, temple, or other religious establishment to which the provisions of Government to make special provision respecting either of the Regulations specified in the mosques, &c. "the preamble to this Act"† are applicable, and the nomination of the trustee, manager, or superintendent thereof at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager, or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

NOTES.

Where the Court finds a properly constituted trust, the fact, that the trust was not carried out would not have the effect of annulling it. 5 A. L. J 23=A. W. N (1908) 34. But to sustain a plea that a temple is a public one, there must be clear and strong proof of subsequent dedication to the public, if the institution originally belonged to a family. 21. M. L. J 588=11 Ind Cas, 633 see also 13. Bom. L. R 101=35 B. 156; 16 A 412; 28 A 124=2. A. L. J 612=(1905) A. W. N 219; 28 A 246=2 A. L. J 788=(1905) A. W. N 264. Bequest to trustees for establishment of image and worship diety after testator's death is vested *Bhupati V Ram Lall* 10 C. L. J 355. (F. B). The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose but it is a fact that may well be taken into consideration when the intention of the founder has to be gathered from an ancient document expressed in ambiguous terms. (*Abhiram V Shama Oharan* 19 M. L. J 529=10 C. L. J 284=25 C. 1003=14 C. W N 1=36 I. A 148 P. C). The destruction of an image does not destroy the endowment 8 C. L. J 369.

Whether property is alienable--Property given for the maintenance of a math as a general rule is inalienable in the absence of special circumstances but such property can be lost by the operation of the statute of limitation. 4 Bom. L. R 743=23 M. 271=27 I. A 69 P. C.; 5 B 93. But in certain circumstances it is alienable. 10 C. W. N 1000.

* After this certain words repealed by Act X of 1914 have been omitted.

† In s. 3 the words quoted have been substituted for the word and figure "section 1" by Act XII. of 1891.

Character of Endowment—The circumstances under this section and worked for many years without protests *fact* evidence that the endowment was of the character of 17 C. L. J 183=40 C 323 But the wrongful assumption by power to appoint a trustee is not sufficient to bring the temple w. 28 Ind Cas. 833.

Accounts to be kept The trustee of a Durga, which falls under is bound to keep proper accounts and to submit them to the Committee. *one*, 18 M L J 205.

Power of Government—Where an institution falling under section 3 of Act is handed over by the Government to a Committee appointed under this Act, the Government has not the power to remove the trustee thereof 15 M. L. J 26.

Burden of proof—In a suit by members of a temple Committee the burden of proving that the temple was of the class mentioned in this section lies on the plaintiff 12 M 366.

4. In the case of every such mosque, temple, or other religious establishment, which at the time of the passing of this Act, shall be under the management of any trustee, manager, or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of, the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager, or superintendent all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple, or other religious establishment, except such property as is hereinafter provided ;

and the powers and responsibilities of the Board of Revenue Cessation of Board's and the local agents, in respect to such powers as to such property mosque, temple, or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent previous to such transfer, shall cease and determine.

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager, or superintendent to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple, or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple, or other religious establishment ; and thereupon such Court may appoint such manager to act until some other person shall by suit established his right of succession to such office.

appointed by the Civil Court shall have and shall exercise all the powers which under this or any other Act, the former manager, or superintendent in whose place such manager acted by the Court had or could exercise in relation to mosque, temple, or religious establishment, or the property belonging thereto.

NOTES.

Scope—Before section 5 of the Religious Endowment Act can be made applicable to a case, it is clear from a perusal of sections 4 and 5 of the Act that a property in question should be one which had been under the management of any trustee, manager, or superintendent at the time of the passing of the Act and that the said property should have been transferred to such trustee manager, or superintendent by the Local Government as directed by that Act, 48 Ind. Cas 162.

Not a Suit—A proceeding started under section 5 of the Religious Endowment Act is not a suit, consequently an order passed under that section is not a decree and is not applicable. 47 Ind. Cas 484 But see 4 Mad 295 where it has been held that appeal from order under s. 5 lies by virtue of s. 647 of the Code of Civil Procedure.

An order made by a Civil Court under the powers conferred by s. 5 of the Religious Endowments Act is a judicial adjudication in the matter before it, and it is competent to the High Court to entertain a civil revision petition against such an order. Before the jurisdiction which is conferred by s. 5 of the Religious Endowments Act can be exercised by a Civil Court, there must be a vacancy in the office, there must have been a transfer to the former trustee and a dispute must have arisen respecting the right of succession to the office. The words in s. 5 "any dispute shall arise respecting the right of succession," apply to a case in which a question has arisen with reference to the person who is to succeed to the office, and the jurisdiction of the Civil Court under the section is not confined to cases in which a dispute has arisen respecting the right to succeed to the office. 26 M 85.

Appoint a Receiver—The Court has no power to appoint a receiver except in certain events under s. 5 of the Act, 8 C. W. N 404.

Temporary appointment of a manager—District Courts have no power upon a vacancy occurring in the office of the trustee of a religious endowment, to appoint a trustee under s. 5 of the Religious Endowment Act, unless the endowed property has been actually transferred to the former trustee under s. 4 of the Act by the Board of Revenue on Government. Section 5 of the Act contemplates the temporary appointment of a manager by the Court, pending the decision by a trial court of the title of any other applicant to the office. 14 C. W. N 1104.

6. The rights, powers, and responsibilities of every trustee, manager, or superintendent to whom Rights, &c., of trustees to whom property is transferred under s. 4 the land and other property of any mosque, temple, or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the condition of their appointment, election and removal, shall be the same as if this Act had not been passed except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulation hereby repealed, over such mosque, temple, or religious establishment and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

All the powers which might be exercised by any Board or local agent, for the recovery of the rent of land or other property transferred

under the said section 4 of this Act, may^{as to} transfer, be exercised by any trustee, manager, or to whom such transfer is made.

7. In all cases described in section 3 of this Act, Constitution and duties Government shall, once for all, one or more committees in every division or district, to take the place, and to exercise the powers, of the Board of Revenue and the Local agents under the Regulations hereby repealed.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

NOTES.

Disqualification of a candidate—A candidate is disqualified to be elected as a member of Devasthan if he had given money or other valuable consideration "in return for" votes and as the result of a bargain with the votes that they should vote for him. 29 M. 166=15 M. L. J. 449.

The committee of a *muth* appointed under s. 7 can maintain a suit for accounts against a tehsildar. 9 C. L. J. 636=2 Ind. Cas. 635.

The effect of ss. 7 and 10 of the Act is that the surviving members must act so that the date of the election shall be fixed not later than three months from the date of the vacancy. If they do not so act, their powers of election are gone, and then unless the Civil Court takes proceeding, on the application of some body and appoints persons, there is no power to fill up the vacancy. 8 M. L. T. 213=7 Ind. Cas. 754.

Status—A committee, appointed under this section is a legal person endowed with powers which do not belong to individual members. The committee does not cease on the death of any or all of its members. 39 C. 304=12 Ind. Cas. 147 see also 1 Pat. L. J. 437.

8. The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested, in the maintenance of such mosque, temple, or other religious establishment.

The appointment of the committee shall be notified in the official Gazette.

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held under such rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.

NOTE.

The word religion does not mean sect. 9 M. L. J. 173.

A member of a committee of a temple, appointed under this section, can retire from his office of his own will. 6 M. 114.

The qualifications contained in this section regarding committee members apply to vacancy filled up under s. 10, 29 M. L. J 671

9. Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness ;

Tenure of office.

Removal.

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

Vacancy to be filled.

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government.

Procedure.

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply ; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

When Court may fill vacancy.

NOTES.

Object The object of this section seems to be to prevent a dead lock when the committee do not do their duty and arrange for an election by providing that where an election has not been held within the prescribed time, the Court may make the appointment if it thinks fit, or if it does not think fit to do so, may order the remaining members of the committee to appoint. The section does not say either expressly or by implication that the remaining members are to hold an election before they appoint. The holding of an election would involve further delay and is what the legislation is intended to obviate 1913 (M. W. N.) 842=21 Ind. Cas. 451

Procedure—A District Judge, acting under this section is not bound to take evidence before appointing a person to the vacancy of a member of the Devasthan committee. The nature of the application under this section invoking the District Judge's power of appointment to the vacancy of a member of the Devasthanam committee make that part of the procedure in the trial of suits which relates to the taking of evidence not obligatory on the District Judge though there is nothing of course to prevent his taking such evidence. A person improperly appointed under s. 10 can be removed either by proceedings by *quæ warrantò* or by injunctions. 29 M. L. J 671=18 M. L. T. 469.

Appeal or review—No appeal lies against an order passed by a District Judge under this section. 29 M. L. J 671 = 18 M. L. T 469. See also 11 M. 20 = 14 I. A 100.

Inasmuch as there is no explicit provision in the Religious Endowments Act for a review, a District Judge has no power under this Act, to review an order passed by him under section 10 of the Act, nor has he any such power under section 141 of the Civil Procedure Code. 37 M. L. J 62 = 53 Ind. Cas. 56.

Vacancy in committee—When a vacancy occurs among the members of a Devasthanam committee, the remaining members of the committee can proceed under section 10 to elect a new member to fill the vacancy, but they cannot nominate any for it. An order was made by a District Court under this section, asking the Devasthanam Committee of the District what steps they had taken to fill up a vacancy that had occurred on the committee and ordering them to fill it up forthwith. The committee thereupon did not elect, but nominated a person for the vacancy. *Held* that the District Court had power to supersede such nomination by a nomination of its own. 6 M. L. J 1.

Privy Council Case—This section does not empower the Civil Court to direct the remaining members of a committee appointed under this Act, when they have failed to hold an election for the choice of a new member, to hold such election. It can direct them to fill up the vacancy, but such filling up is then their own act. A proceeding of the Civil Court under this section is a judicial and not merely an administrative or ministerial act. In such matters the Civil Court exercises its powers as a Court of Law not merely as a *person designata* whose determinations are not to be treated judgments of a legal tribunal (15 A. L. J 645 = 40 M 793 = 26 C. L. J 143)

Section 115 of the Civil Procedure—Section 115 of the Civil Procedure Code enables the High Court, in a case in which no appeal lies, to call for the record and to pass such an order in the case as the Court may think fit. The section applies to jurisdiction alone, the irregular exercise, or non-exercise of it or the illegal assumption of it; it is not directed against conclusions of law or fact in which jurisdiction is not involved. "Case" is not defined in the Code. It cannot be confined to litigation in which there is a plaintiff who seeks to obtain a particular relief against the defendant before the Court but includes an *ex parte* application praying that persons in the position of trustees or officials should perform their trust or discharge their judicial duties. It includes therefore proceedings under this section = (15 A. L. J 645 = 40 M 793 P. C.)

11. No member of a committee appointed under this Act shall

No member of committee	be capable of being, or shall act, also
to be also trustee, &c., of	as a trustee, manager, or superintendent
mosque, &c.	of the mosque, temple or other religious
establishment for the management of which such committee shall	
have been appointed.	

12. Immediately on the appointment of a committee as above

On appointment of com-	provided, for the superintendence of any
mittee Board and local	such mosque, temple, or religious estab-
agents to transfer property	lishment, and for the management of
its affairs, the Board of Revenue or the local agents acting under the	
authority of the said Board, shall transfer to such committee all	
landed or other property which at the time of appointment shall	
be under the superintendence, or in the possession, of the said	
Board or local agents, and belonging to the religious establish-	
ment, except as is hereinafter provided for ;	

and thereupon the powers and responsibilities of the Board and

Termination of powers and	the local agents, in respect to such mos-
responsibilities of Board and	que, temple or religious establishment,
agents.	and to all land and other property so

transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer, be exercised by such committee to whom such transfer is made.

NOTE.

Section 12 relates only to the rents of property transferred by Government to the Committee of such institution. 17 M. 143.

Powers of committee—Vide 43 Ind. Cas. 905 ; 28 Ind. Cas. 556.

13. It shall be the duty of every trustee, manager, and superintendent of a mosque, temple, or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements, in respect of the endowments and expenses of such mosque, temple, or other religious establishment ;

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to acquire from every trustee, manager, and superintendent of such mosque, temple, or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year ; and every such committee of management shall themselves keep such accounts thereof.

NOTES.

A temple committee constituted under this Act has no business to interfere in the internal management of the temple or in mere matters of ritual and ceremonial. They should not interfere with the trustee, except where interference is necessary in discharge of the secular duties which the Act imposes on the committee. The committee's functions are primarily to see that the funds of the endowment are preserved and not wasted. 54 Ind. Cas. 281.

The committee of a temple cannot dismiss the *Dharmī Kartā* under the powers vested in them under Act of XX of 1863, on the ground that the *Dharmī Kartā* did not voluntarily render accounts if any particular period. Before exercising that privilege of dismissal, the committee are bound to call for accounts from the *Dharmī Kartā* and the dismissal will be valid only on the latter's failure to comply with the order. 18 Ind cas. 58. See also 24 M. L. J. 358.

14. Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager, or superintendent of such mosque, temple, or religious establishment, or the member of any committee appointed under this Act, for

any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, superintendent, or member of such committee, in respect of the trusts vested in, or confided to, them respectively ;

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent, or member of a committee,

Powers of Civil Court.

and may decree damages and costs against such trustee, manager, superintendent, or member of a committee,

and may also direct the removal of such trustee, manager, superintendent, or member of a committee.

Scope of this section and section 92 of C. P. Code—S. 92 of the C. v. l. Procedure Code and this section, so far as the forms of relief to which they relate are the same, appear to offer a choice to persons interested in the trust. They might proceed under either and are not bound to proceed under both. 24 M. L. J. 697=14 M. L. T. 44=20 Ind. Cas. 515 But section 92 of the Civil Procedure Code is substantially the wider section and provides *inter alia* for setting a scheme which is a jurisdiction of a very wide and beneficial nature. 48 Ind. Cas. 514. Suits in which relief is asked for against strangers to the trust, whether alienees from the trustees or trespassers, are outside the purview of s. 92 of the Code. 31 M. L. J. 777=20 M. L. T. 490=40 M. 212.

Who can sue—This section is sufficiently general in terms to empower any person interested in any temple, mosque, or religious endowment, or in the performance of the trusts relating thereto, to sue the trustee, manager, or superintendent, or the member of a committee appointed under the Act, for misfeasance, and also to empower the court to order the removal of a trustee etc. 2 M. 197 see also. 7 C. 769=9 C. L. R. 470.

Applies to certain religious trusts This section only applies to certain religious trusts and endowments which had been or might come to be under the management to the Government. 2 C. L. R. 128 ; 3 C. 363 ; 2 C. L. R. 121 ; 17 M. 95.

Committee may sue without leave A committee appointed under this Act, may, without leave of Court previously obtained, sue their manager, or superintendent, for damages for misappropriation, and for injunction. 9 C. 133=11 C. L. R. 333.

Removal of all trustees The section empowers the Civil Court to remove trustees for misfeasance etc. and it does not recognise any difference in respect of trustees, whether hereditary or selected. 2 M. 197 The words "trustee, manager, or superintendent of a mosque etc." mentioned in the Act mean the trustees, manager, or the superintendent of a mosque etc. to which the provisions of the Act are applicable, not the trustee, etc. of any mosque. 8, C. 32=9 C. L. R. 433.

No appeal No appeal lies against the order as to costs. 21 M. 421.

Suit against transferee A transferee of a trust property, under a transaction which amounts to a breach of trust on the part of the trustee of the institution cannot be proceeded against under the provisions of the Religious Endowment Act 22 M. 223.

This Act does not require that a person appointed by a committee to be a trustee of a temple should be of any particular sect, and although it may be desirable that the trustee of a temple should be of the sect to which the temple belongs, the appointment of a Sevaita to be trustee of a Vishnaita temple does not amount to an act of misfeasance, neglect, or breach of trust on the part of the committee within the meaning of this section. 7 M. 222

In a suit against the trustee of a religious institution under this Act for alleged breaches of trust and neglect of duty by reason of the non-performance of ceremonies it is not necessary, in order to give jurisdiction to Civil Courts for the plaintiffs to show that there are any special funds constituting an endowment of the institution 23 M. 298.

In a suit brought under the Religious Endowment Act, a declaration that property belongs to an institution and that a mortgage over it is not binding on the institution

may be asked for and made, when it is ancillary to a claim for the removal of the manager. 24 M. 243.

Under section 14 of the Act, the Court may direct the removal of a trustee or a manager. Where a dismissed trustee is in possession of trust properties, he has, on his removal, to be relieved of his possession of the trust properties. 18 M. L. J. 205 = 31 M. 212.

Section 14 of the Act only empowers a Court to direct the specific performance of act by the trustee, manager or superintendent or to award damages or costs against such trustee, manager, or superintendent and to direct their removal. 5 A. L. J. 191 = A. W. N. (1908) 101.

Where there is a duly constituted manager of a religious institution, he cannot be removed from his office except by bringing a civil suit. And, for such a civil suit previous sanction is required under ss. 14 and 18 of the Act or s. 539 Civil Procedure Code. 7 P. R. 1908 = 176 P. L. R. 1908. see also 216 P. L. R. 1912.

A Civil Court has jurisdiction to try, when proceedings are instituted under section. 14 M. L. T. 311 = 6 Ind. Cas. 684.

The suit contemplated by section 14 of the Act is a suit instituted primarily against the trustee, manager, or superintendent of a mosque, temple, or religious establishment or the members of any committee appointed under that Act, and the only relief that can be asked in such a suit is a decree directing specific performance of any act by such trustee, manager etc. a decree for damage and costs against them and decree directing their removal. 49 Ind. Cas. 355.

Although under s. 539 of the Code of Civil Procedure there was a difference of opinion whether a suit brought under that section should not also be obtained under s. 14 of Act XX of 1863, these doubts have been set at rest by s. 92 of the new code as sub cl. (2) makes it clear that the provisions of the section are mandatory and that no suit could be brought for any of the relief specified in the section except under the conditions laid down in the section, saving at the same time the jurisdiction of the District Courts under the Religious Endowments Act. Section 92 Civil Procedure Code and s. 14 of Act XX of 1863 are not mutually exclusive. A plaintiff has an option to bring his suit under either section for any relief common to both. 2 M. W. N. 351 see also 37 M. 184.

15. The interest required in order to entitle a person to sue

Nature of interest entitling a person to sue. under the last preceding section need not be a pecuniary, or a direct or immediate, interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service or any mosque, temple, or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. In any suit or proceeding instituted under this Act it

shall be lawful for the Court before Reference to arbitrators. which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Whenever any such order shall be made, the provisions of Chapter XXXVII.* of the Code of Civil Procedure shall in all respects apply Civil Procedure Code applied.

* Now see Act V of 1908.

to such order and arbitration, in the same manner as such order had been made on the application of the parties under section 506* of the said Code.

NOTES.

Under s. 16 of the Religious Endowments Act, a Court may refer any matter in difference in the suit for decision by an arbitrator, but it is not open to the Court to refer the whole suit 26 M 361. Vide also 19 M. 498.

17. Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from the making the order or reference under the said section 506* of the said Code of Civil Procedure.

18. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.†

The Court, on the perusal of the application, shall determine whether there is sufficient *prima-facie* grounds for the institution of a suit, and, if in the judgment of the Court, there are such grounds, leave shall be given for its institution.†

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

NOTES

Leave to institute suits—Leave to bring a suit should be obtained under this section 3 C. 563=2 C. L. R 121. Such a suit may be brought in *forma pauperis* 24 M. 419. Applications to District Court under this section should be only verified and prosecuted either by the applicant in person or by his pleader 24 M. 685. When an application is made against several trustees the application should clearly set forth the charges and the nature of the charges made against each, especially as under s. 18, the Judge is to determine merely on a perusal of the verified petition whether there are sufficient *prima-facie* grounds against each of the trustees and the Judge would be acting with material irregularity in the exercise of his jurisdiction in according sanction based on a general petition and if such irregularity should materially prejudice the trustees; the High Court can exercise its powers of revision under section 622 C. P. C and can set aside the sanction 15 M L. J 221. But no appeal lies against such an order. 5 C L. J 641=34 C. 584. A trustee of a religious endowment can sue his co-trustee for a breach of trust, without getting sanction under this section. 19 M. L. J 513=4 Ind. Cas. 874.

A district judge can grant leave under this section after refusing leave. (1911) 2 M. W. N. 167. A suit for the removal of a trustee of a mosque under the authority of S. 14 of the religious Endowments Act may be instituted with the leave of the Court under this section. But a suit for the appointment of a new trustee by the Court does not lie without obtaining the requisite leave under S. 539 of the code of 1882—21 M. L. J. 450=9 Ind. Cas. 168=(1911) M. W. N. 142. For a Court to have jurisdiction to grant sanction under this section, to institute a suit it is not necessary for it to be shown that the Board of Revenue has actually exercised control over the temple 26 M. 166.

* Now see Act V. of 1908.

† Certain words, which are repealed by Act VII of 1870 have been omitted.

A sanction given at the instance of a petitioner under this section for leave to institute a suit, without first giving notice to the counter petitioners and hearing their objections, if any, is a legal sanction, 7 M. L. J. 84.

The Religious Endowments Act was not intended to apply to a suit, brought under the ordinary original jurisdiction of the High Court inherited from the Supreme Court, charging neglect of duty on the part of a temple trustee. Such a suit is therefore maintainable without leave being obtained under this section. 24 M 219.

See also, 40 M 212; (1916) M. W. N. 351. 3 L. W. 12; 35 Ind. Cas. 880; 10 M. L. J 109.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager, or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof, as to the Court may seem necessary.

20. No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Cases in which endowments are partly for religious and partly for secular purposes.

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager, or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager, or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Government not to hold charge henceforth of property for support of any mosque, temple, &c.

22. Except as provided in this Act, it shall not be lawful* for any Government in India, or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple, or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple, or other establishment, or

to nominate or appoint any trustee, manager, or superintendent thereof, or to be in any way concerned therewith.

23. Nothing in this Act shall be held to affect the provisions of the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples, and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said Regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, &c.

24. The word "India" in this Act shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Vict., c. 106, entitled "An Act for the better government of India."

* Certain formal words, which were repealed by Act XVI of 1874, have been omitted.

ACT XXIII. OF 1863.

The Waste-lands (Claims) Act, 1863.*

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1863.

An Act to provide for the adjudication of claims to waste-lands

WHEREAS it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste-lands proposed to be sold, or otherwise dealt with, on account of Government, and objections taken to the sale or other disposition of such lands ; It is enacted as follows :—

1. When any claim shall be preferred to any waste-land Enquiry into claims to proposed to be sold or otherwise dealt land or objections to its with on account of Government, or sale. when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of land revenue in such district, by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which

* Act XXIII. of 1863 has been declared to be in force in the whole of British India, except as regards the Scheduled District.—See Act XV. of 1874, s. 3.

This title has been given by the Indian Short Titles Act (XIV. of 1897).

It has been declared to be in force in the Arakan Hill Districts by Reg. (IX. of 1874), s. 3.

It has been declared under the Scheduled Districts Act (XIV. of 1874) to be in force in the following Scheduled Districts :—

West Jalpaiguri	See <i>Gazette of India</i> ... 1881, Pt. I., p. 1.
The District of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	Ditto ... 1881, Pt. I., p. 504.
The Porahat estate in the Singhbhum District	Ditto ... 1897, Pt. I., p. 1059.
Kumaon and Garhwal	Ditto ... 1876, Pt. I., p. 605.
The scheduled portion of the Mirzapur District	Ditto ... 1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ... 1879, Pt. I., p. 382.
The District of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ... 1886, Pt. I., p. 48.
The District of Lahaul	Ditto ... 1886, Pt. I., p. 391.
The District of Silhat	Ditto ... 1879, Pt. I., p. 631.
The District of Kamrup, Nagaong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvdrs), and Kachar (excluding the North Kachar Hills)	Ditto ... 1878, Pt. I., p. 533.
It has been extended, under the same Act, to the following Scheduled Districts :—	
The Western Dvdrs	See <i>Gazette of India</i> ... 1875, Pt. I., p. 497.
The North-Western Provinces Tarai ...	Ditto ... 1876, Pt. I., p. 505.

period shall not be less than three months, proceed to make an enquiry into the claim or objection.

NOTE—Vide 12 C 279.

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence or documents upon which he may rely in proof of his claim or objection; and, after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection, and, if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid shall appear to be proper.

If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchasers at the time of sale.

3. Pending an enquiry into any claim or objection under the last preceding section, the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land.

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land, to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided.

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land;

but such sale or other disposition of land may afterwards be proceeded with if, on an order issued* to try the claim or objection, as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land, be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector;

*Here certain words have been omitted by Act 4 of 1914.

and, if such claimant or objector shall not within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid, that he intends to contest such order, the order shall be final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the* superior revenue-authority "to which he is immediately subordinate"; and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support, or otherwise, of the claim or objection;

and such† authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify, or reverse the order of the Collector or other officer as aforesaid.

If the‡ authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided;

and such Court shall forthwith give notice to the claimant or objector;

and, if such claimant or objector shall not§ institute a suit in such Court to establish his claim or objection the order of the* authority aforesaid shall be final.

6. The Local Government may, within twelve months after the date on which the claim of any claimant of waste-land, or the objection of any objector as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector, in a Court constituted as hereinafter provided.

* Certain words repealed by Act 4 of 1914 have been omitted.

† Certain words here have been added by Act 4 of 1919.

‡ Certain words referring to limitation of suits, which were repealed by Act IX. of 1871, have been omitted. For limitation, see now Act XV. of 1877, Sch II., No. 1.

7. For the investigation and trial of claims under this Act the local Government shall constitute, in every district in which there may be any waste-lands capable of being sold or otherwise dealt with on account of Government, a Court consisting of an uneven number of persons, not less than three, of whom the Judge of the district, or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one.

Any one or more of the members of which such Court shall consist shall have power to make all such orders in the case as may be necessary prior to the hearing of the suit .

Provided that, whenever the Collector or other officer by whom the original enquiry was held is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

8. Whenever any Court is constituted under this Act, notice thereof shall be given by written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district :

and from the date of the issue of such proclamation no other Court shall be competent to entertain any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

9. The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient.

10. In every suit instituted under section 5 of this Act the claimant of the waste-land, or objector to the sale or other disposition of such land, shall appear as plaintiff ; and the Collector or other officer as aforesaid shall appear as defendant on the part of Government.

Appearance. Either party may appear by pleader or by agent.

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf.

In any suit ordered to be instituted* under section 6 of this Act, the Government, by any officer Plaintiff and defendant in suit under section 6 to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

11. In suits instituted under this Act, except as hereinafter provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.†

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to the parties or their agents; and on the day so fixed the parties or their agents shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Court shall issue a subpoena requiring such witness to attend the Court on that day.

It shall be competent to the Court to require the personal attendance of the claimant of the waste-land, or objector, as aforesaid, on the day fixed for the hearing, or at any subsequent stage of the suit.

13. On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste-land, or the objector, or his agent (when his personal attendance is not required), and the witnesses of the parties;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

14. No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

15. If, on the trial of any suit under this Act, any question of law, or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on

* Here certain words have been omitted by Act 4 of 1914.

† See Act 5 of 1908.

which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of appeal and the revision in the territory in which the land is situate :

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the right of a class.

16. The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of appeal as aforesaid, and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred ;

but no final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the said High Court, or highest Civil Court of appeal.

17. The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

18. No claim to any land, or to compensation or damage in respect of any land, sold or otherwise dealt with on account of Government as waste-land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

If within three years after any lands have been delivered by the Government to the purchase, or otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid within the period limited under section 1 of this Act, such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer

of the principal Civil Court of original jurisdiction in the district) the defendant in the suit ;

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.

19. In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established, the Court shall not award the claimant possession of the land in dispute ; but shall order him to receive from the Government treasury, by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit.

20. If the land shall have been sold subject to any condition or reservation, or shall not have been sold, but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of an objector, is established, the Court shall award the claimant or objector to receive such sum, in respect of his interest in such land, as shall be awarded in that behalf under the provisions of Act VI. of 1857 ;*

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest.

21. An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector ; and shall bar any future claim on his part, in respect to the land in suit, resting on the same cause of action, or on a cause of action which existed prior to the date of the sale or other disposition of the land on account of Government.

22. Nothing in this Act shall be held to prevent the Local Government from awarding to any claimant of waste-land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid, or to the proper Court constituted under this Act, within the period prescribed by this Act), such amount as

*See now the Land Acquisition Act (I. of 1894).

compensation for the said land, within the limit as to amount mentioned in section 19 of this Act, if the land have been sold not subject to any condition or reservation, as to such Local Government may seem proper.

23. If the land have been sold subject to any condition or reservation, or have been otherwise disposed of, on account of Government, and any claim to such land, or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid, or to the Court constituted under this Act, within the period prescribed by this Act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land.

23A.* In a province for which there is a Board of Revenue or Financial Commissioner, the powers and duties of the Local Government under sections 6, 10, 22 and 23 may be exercised by such Board of Financial Commissioner as, the case may be.

24. (** Interpretation Clause, Number, Gender*—Repealed by Act X. of 1914).

* Section 23A has been inserted by Act 4 of 1914.

ACT XXXI. OF 1863.

The Official Gazettes Act, 1863.*

RECEIVED THE G.-G.'S ASSENT ON THE 16TH DECEMBER 1863.

An Act to give effect to the publication of certain orders and other matters in the Gazette of India.

Whereas the Governor-General of India in Council has resolved to publish an official Gazette, to be called the *Gazette of India*, containing such orders, notifications, and other matters as the Governor-General of India in Council shall direct to be inserted therein; It is enacted as follows:—

1. When, in any Regulation or Act now in operation, or in any rule having the force of law, it is directed that any order, notification, or other matter, shall be published in the Gazette of any presidency or place, such order, notification, or other matter, shall be deemed to be duly published in accordance with the requirements of the law, if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the *Gazette of India* under the directions of the Governor-General of India in Council.

* This title has been given by the Indian Short Titles Act (XIV. of 1897)

The Act XXXI. 1863 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Local Laws Extent Act (XV. of 1874), s. 3.

It has been declared to be in force in the following districts by the Scheduled Districts Act (XIV. of 1874):—

Sindh	...	See <i>Gazette of India</i>	...1880, Pt. I., p. 672.
West Jalpaiguri, the Western Dvairs, the Western Hills of Darjeeling, the Darjeeling Tarai, and the Damson Sub-division of the Darjeeling District	...	Ditto	...1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	Ditto	...1881, Pt. I., p. 504.
The scheduled portion of the Mirzapur District	...	Ditto	...1879, Pt. I., p. 383
Jaunsar Bawar	...	Ditto	...1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	Ditto	...1886, Pt. I., p. 48.
The District of Lahaul	...	Ditto	...1886, Pt. I., p. 306.
The Scheduled Districts of the Central Provinces	...	Ditto	...1879, Pt. I., d. 771
The District of Sylhet	...	Ditto	...1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills)	...	Ditto	...1897, Pt. I., p. 299.

It has been extended under the same Act to the Scheduled Districts of Kumaon and Garhwal. See *Gazette of India*, 1876, Pt. I., p. 606.

ACT II. OF 1864.**Civil and Criminal Justice, Aden.**

RECEIVED THE G.-G.'s ASSENT ON THE 12TH FEBRUARY 1864

An Act to provide for the administration of civil and criminal justice at Aden.

Whereas the administration of civil and criminal justice at Aden is now entrusted to the Resident and in subordination to him to the Assistant Resident, * and whereas the criminal law to be administered at Aden is provided for by the Indian Penal Code, but the law to be administered at Aden in civil matters and the precise nature of the criminal and civil jurisdiction of the Resident, and the proper course of procedure in his Court, have never been defined, and it is expedient that they should be provided for; and whereas at present judgments and proceedings of the Resident at Aden are not subject to the superintendence or revision of any Court of justice, except so far as they are subject to appeal to Her Majesty in Council, and it is expedient to provide for the superintendence or revision of certain of such judgments and proceedings by the High Court at Bombay; It is enacted as follows :—

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant thereto, that is to say :—

the word "Resident" denotes the chief civil officer at Aden appointed by the Government by whatever designation such officer may be called, and includes any Acting Resident or officer acting temporarily as such chief civil officer;

the words "Assistant Resident" denote any officer appointed by the Government to assist the Resident at Aden by whatever designation such officer may be called, and includes an Acting Assistant;

the words "Court of the Resident" include the Court of any Assistant Resident;

words importing the singular number include the plural number, and words importing the plural number include the singular number;

words importing the masculine gender include females.

* Certain words, repealed by Act XVI. of 1891, have here been omitted.

CIVIL JURISDICTION.

Administration of civil justice vested in Court of Resident.

2. The administration of civil justice at Aden is hereby declared to be vested in the Court of the Resident.

3. The Resident may hear and determine, in the first instance, all cases instituted in the Court of the Resident, of whatever nature, and whatever may be the amount or value of the property in dispute.

Resident may try, in first instance, all cases instituted in Court of Resident.

4. The Assistant Residents shall have power to hear and determine, in the first instance, all cases instituted in the Court of the Resident, of whatever nature, and whatever may be the amount or value of the property in dispute.

Cases triable by Assistant Residents.

The Resident may, from time to time, direct in what manner the cases instituted in his Court shall be distributed amongst the Assistant Residents.

5. When any suit which relates to immoveable property, or in which the claim, estimated according to any law for the valuation of claims for the time being in force, shall exceed five hundred rupees in value is tried in the first instance by an Assistant Resident, an appeal shall lie from his decision to the Resident.

Appeal from Assistant Resident to Resident.

An appeal shall also lie to the Resident from all orders passed by an Assistant Resident in the execution of a decree or other order from which, had the order been passed by a Court subordinate to the Court of a District Judge in the Presidency of Bombay, an appeal would have been allowed to the District Judge, as well as from all orders passed by an Assistant Resident in cases other than suits as defined in the Code of Civil Procedure.

6. For the hearing and determination of appeals from decisions and orders under the last preceding section, the Resident shall (save as herein is otherwise provided) possess and exercise the powers of a District Judge in the Bombay Presidency with reference to the Court subordinate to him.

Powers of Resident in hearing appeals.

7. No appeal shall lie from the decision of an Assistant Resident in any suit not relating to immoveable property; in which the claim estimated as aforesaid shall not exceed five hundred rupees in value; but the Resident may, within the period allowed for appeal in appealable cases, call for any proceedings of

Cases in which no appeal from Assistant Resident.

Powers of revision.

the Assistant Resident at any stage thereof, and may pass such orders thereon as he may think fit.

8. No appeal shall lie from any decision or order of the Resident given or made by him, whether in the exercise of his original jurisdiction, or in the exercise of his jurisdiction as a Court of appeal or of revision : but if, in the trial of any suit in which the claim estimated as aforesaid shall not exceed one thousand rupees in value, any question of law or of usage having the force of law, or of the construction of a document affecting the merits of the decision shall arise, on which the Resident shall entertain doubts, the Resident may, either of his own motion, or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with his own opinion for the decision of the High Court of Judicature at Bombay :

Reference of question of law, &c., to High Court.

and if, in the trial of any suit or the hearing of an appeal in any suit in which the claim, estimated as aforesaid, shall exceed one thousand rupees in value, any question of fact or of law, or of usage having the force of law, or of the construction of a document affecting the merits of the decision, shall arise, the Resident shall, on the application of any of the parties to the suit, or he may of his own motion, draw up a statement of the case, and submit it with his own opinion for the decision of the said High Court.

9. The Resident may proceed in the case notwithstanding a reference to the High Court, and may pass a decree contingent upon the opinion of the High Court on the point referred ; but no execution shall be issued in any case in which a reference shall be made to the High Court, until the receipt of the order of that Court.

Resident may pass decree contingent upon opinion of High Court, pending which execution not to issue.

10. Cases referred for the opinion of the High Court shall be heard by two or more Judges of the Court. Before giving judgment, the High Court may call for and peruse the whole or any part of the proceedings of the Court of the Resident, but shall not be bound so to do.

Full Bench of High Court to decide cases referred.

Parties may appear and be heard in person or by pleader.

11. The parties to the case may appear and be heard in the High Court in person or by a pleader.

12. The High Court, when it has heard and considered the case, shall transmit to the Resident a copy of its judgment, under the seal of the Court and the signature of the Registrar.

Decision of High Court how transmitted.

trar; and the Resident shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the High Court.

13. Costs, if any, consequent on the reference of a case for the opinion of the High Court, shall be costs in the suit.

Costs of reference to High Court.

14. When any suit tried in the first instance by the Resident is of such a nature as to be cognizable under Act XLII. of 1860* (*for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter*), the Resident shall, in such suit, have all the powers conferred on, and shall be guided by all the provisions applicable to, a Court of Small causes constituted within the Presidency of Bombay under the said Act or any other Act for the time being in force, not being an Act relating to Courts of Small Causes in the Presidency-towns: and every Assistant Resident who shall have been vested by the Governor of Bombay in Council with the powers of a Judge of a Court of Small Causes as defined in the said Act XLII. 1860, or any Act passed in supersession thereof,† shall have the like powers, and be guided by the like provisions in any suit tried by him in the first instance and of a nature cognizable under the said Act XLII. of 1860, anything in section 5 of this Act contained to the contrary notwithstanding.

15. In the administration of civil justice, the Court of the Resident shall be guided by the spirit and principles of the laws and Regulations in force in the Presidency of Bombay, and administered in the Courts of that Presidency not established by Royal Charter, and in the High Court in the exercise of its jurisdiction as a Court of appeal from those Courts.

CIVIL PROCEDURE.

16. Except as otherwise provided in this Act, the proceedings in suits and cases of every description between party and party brought in the Court of Resident shall be regulated by the Code of Civil Procedure, and by any other Act, or Acts in relation to civil procedure in force for the time being.

Code of Civil Procedure applied.

CRIMINAL JURISDICTION.

17. The administration of criminal justice at Aden is hereby declared to be vested in the Court of the Resident, save as is herein otherwise provided.

Administration of criminal justice how vested.

* Repealed by Act XI. of 1865.

† Act XI. of 1865.

18. The Governor of Bombay in Council may invest any
Governor of Bombay Assistant Resident with the powers of a
may give Assistant Res- Magistrate, or of a subordinate Magi-
idents certain powers strate of the first or second class as des-
 cribed in the Code of Criminal Procedure, and such Assistant
 Resident shall exercise such powers under the said Code, but
 subject to the provisions of this Act.

19. In every case tried by an Assistant Resident in which the
Appeal from Assistant punishment awarded shall be imprison-
Resident to Resident ment for a period exceeding six months,
 with or without fine, or shall be only a fine exceeding five hundred
 rupees, an appeal shall lie from the sentence of the Assistant
 Resident to the Resident.

No appeal shall lie from the sentence of an Assistant Resident
 in any case in which the punishment shall be imprisonment for
 a period not exceeding six months, with or without fine, or
 shall be only a fine not exceeding five hundred rupees, but the
 Resident may in all cases within the period allowed for appeal in
 appealable cases, call for any proceedings whatever of the Assis-
 tant Resident at any stage thereof, and may pass such order
 thereon as he may think fit.

20. The Resident shall, except as in this Act is otherwise pro-
Exercise by Resident of vided, exercise all the powers of a Court
power, of Court of Session of Session as defined in the Code of Cri-
and of Magistrate. minal Procedure, and he may also, when
 it shall seem to him proper so to do, exercise the powers of a
 Magistrate as defined in the said Code, except in cases triable
 before himself as a Court of Session.

21. The Resident in the exercise of his powers as a Court of
As Court of Session, to Session shall hold gaol-deliveries at con-
hold gaol-deliveries. venient periods, of which due notice
 shall be given, for the trial of all persons charged with offences
 punishable under the Indian Penal Code, or under any other law
 in force for the time being, who may be committed to take their
 trial before him as a Court of Session.

Provided that the Resident shall not have power to try any
Powers of Resident as to European British subject charged with
trial of European British an offence punishable with death under
subjects. the said Code.

The commitment of any European British subject charged
Commitment in certain with any such offence shall be made
cases to the High Court at Bombay.

In all other cases the commitments made within the limits of
In other cases. of the jurisdiction of the Court of Resi-
 dent for the offences punishable under
 the Indian Penal Code shall be made to the Court of the Resident.

22. If any European British subject shall be charged in Aden with any offence (other than an offence punishable with death under the Indian Penal Code) which a justice of the Peace shall not be competent to punish, and there shall be sufficient grounds for committing him for trial, such European British subject shall be committed to the Court of the Resident, and shall be tried by the Resident.

"22A" (1) The Governor of Bombay in Council may appoint any Assistant Resident to be an Additional Sessions Judge.

(2) Subject to the provisions of this Act, an Additional Sessions Judge shall exercise the same criminal jurisdiction as is conferred by this Act on the Resident, and the provisions of this Act regarding criminal procedure shall apply to him in the same way and to the same extent as they do to the Resident.

(3) An Additional Sessions Judge shall try only such cases and appeals as the Resident by general or special order may direct him to try.

(4) Nothing in section 19 of this Act shall apply to cases tried by or the proceedings of an Assistant Resident when exercising the powers of a Court of Session."

CRIMINAL PROCEDURE.

23. Save as in this Act otherwise provided, the proceedings in all criminal cases of any description brought in any Court in Aden shall be regulated by the Code of Criminal Procedure.

24. Criminal trials before the Resident as a Court of Session, in which a European (whether a British subject or not) or an American is the accused person, or one of the accused persons, shall be by jury, and in such case the jury, if such European or American shall desire it, shall consist of at least one-half Europeans or Americans, if such a jury can be procured.

25. The Resident shall from time to time, prepare and make out, in alphabetical order, a list of persons residing at Aden, who are, in the judgment of the Resident, qualified, from their education and character, to serve as jurors.

* Section 22A has been inserted by Act V. of 1918.

The list shall contain the names, places of abode, and quality or business of every such person, and shall mention the race to which he belongs.

26. Copies of such list shall be stuck up in the Court of the Resident, and every such copy shall have subjoined to it a notice stating that objections to the list will be heard and determined by the Resident at a time and place mentioned in the notice.

27. All the provisions of the Criminal Procedure Code as to jurors and the list of jurors shall be applied, so far as the same can be applied respectively, to jurors and the list of jurors under this Act:

Provided that no person shall be exempt from the liability to serve as a juror on the ground only of his being in the military service:

Provided also that the jurors shall be summoned by the Resident.

28. If, on any trial, sentence of death shall be passed by the Resident, such sentence shall not be carried into execution until it shall have been confirmed by the High Court at Bombay.

It shall be lawful for the High Court at Bombay, in any case in which it shall seem proper so to do, to commute a sentence of death to a sentence of transportation for life, or for any shorter period not less than seven years.

29. No appeal shall lie from an order or sentence passed by the Resident in any criminal case.

But it shall be at the discretion of the Resident to reserve any point or points of law for the opinion of the said High Court.

30. On such point or points of law being so reserved as in the last preceding section mentioned, or on its being certified by the Advocate-General at Bombay that in his judgment, there is an error in the decision of a point or points of law decided by the Resident, or that a point of law decided by the said Resident should be further considered, the said High Court shall have full power and authority to review the case or such part of it

as may be necessary, and finally determine such point of law, and thereupon to pass such judgment and sentence as to the said High Court shall seem right.

GENERAL RULES.

31. The High Court at Bombay shall have power to make and High court to frame rules issue general rules for regulating the for Resident's Court. practice and proceedings of the Court of the Resident "and the Court of the Additional Sessions Judge"* and also to frame forms for every proceeding in the said Courts for which the said High Court shall think it necessary that a form should be provided, for keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by the Court of the Resident "and the Court of the Additional Sessions Judge"* and from time to time to alter any such rule or form : provided that such rules and forms shall not be inconsistent with the provisions of this act, or of any other law in force.

ACT III. OF 1864.

The Foreigners Act, 1864.†

RECEIVED THE G. G.'s ASSENT ON THE 12TH FEBRUARY 1864.

An Act to give the Government certain powers with respect to Foreigners.

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government ; It is enacted as follows :—

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, Interpretation-clause. unless there be something in the subject or context repugnant to such construction, that is to say :—

* The words within quotation have been inserted by Act 5 of 1918.

† Act III of 1864 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts. See Act XV. of 1874, s. 3.

This title has been given by the Indian Short Titles Act (XIV of 1897). It has been declared in force in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4 ; in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III of 1899), s. 3 ; in Angul and the Khondmals by Reg. (I of 1894), s. 3 ; in the Arakan Hill District by Reg. (IX. of 1874), s. 3 ; and in British Baluchistan by Reg. (I. of 1890), s. 3 ; and by Reg. (II. of 1913), s. 3.

The words "British India" shall denote the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India":

The words "Local Government" shall denote the person authorized to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor-General of India in Council, when such chief executive officer shall, by an order of the Governor-General of India in Council published in the *Gazette of India*, be authorized to exercise the powers vested by this Act in a Local Government:

The word "foreigner" shall denote a person, not being either a natural born subject of Her Majesty within the meaning of the Statute 3 & 4 William IV., chapter 85, section 81, or a native of British India.

The word "the Magistrate of the District," shall denote the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, but whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at

It has been declared under the Scheduled District Act (XIV. 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	...	See <i>Gazette of India</i> ,...	1874, Pt. I, p. 482.
Aden	...	Ditto	1879, Pt. I, p. 434.
West Jalpaiguri, the Western Dvars, the Western Hills of Darjiling, the Darjiling Talai, and the Damsay Sub-division of the Darjiling District	...	Ditto	1881, Pt. I, p. 74
The Districts Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	Ditto	1881, Pt. I, p. 504.
The Porahat estate in the Singhbhum District	...	Ditto	1897, Pt. I, p. 1059.
The scheduled portion of the Mirzapur District	...	Ditto	1879, Pt. I, p. 383.
Jhelum and Bawur	...	Ditto	1879, Pt. I, p. 382.
The District of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan	...	Ditto	1896, Pt. I, p. 48.
The District of Lahaul	...	Ditto	1886, Pt. I, p. 301.
The Scheduled District of the Central Provinces	...	Ditto	1879, Pt. I, p. 771.
The District of Silhat	...	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills)	...	Ditto	1897, Pt. I, p. 299.
It has been extended under the same Act to the following Scheduled Districts, namely:—			
Kumaon and Garhwal	...	See <i>Gazette of India</i> ...	1876, Pt. I, p. 606.
The North-Western Provinces and Tibet	...	Ditto	1876 Pt. I, p. 505.

which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure.

The word "vessel" shall include anything made for the conveyance by water of human beings or property.*

2. If a question shall arise whether any person alleged to be a foreigner, and to be subject to the provisions of this Act, is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

3. The Governor-General of India in Council may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order;

and any Local Government may, by writing, make the like order with reference to any foreigner within the jurisdiction of such Government.

NOTE—Vide 18 B. 636.

Foreigner refusing to remove, or returning without licence after removal, may be apprehended and detained.

If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do; or

if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor-General of India in Council or by the Local Government under whose order he shall have removed himself or been removed,

such foreigner may be apprehended and detained in safe custody until he shall be discharged therefrom by order of the Governor-General of India in Council or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor-General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the Allies of Her Majesty, and of the neighbouring Princes and States.

5. Whenever the Governor-General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor-General of India in

Governor-General may order provisions of Act to be in force in British India, or in part thereof.

*Here certain words having been repealed by Act X. of 1914 have been omitted.

Council, by a notification published in the *Gazette of India*, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act, including this and the subsequent sections, shall have full force and effect in British India or such part thereof as shall have been so specified.

The Governor-General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein :

Provided that none of the provisions
 Proviso. of this or the subsequent sections of
 this Act shall extend—

to any foreign minister duly accredited by his Government ;
 to any consul or vice-consul ;
 to any person under the age of fourteen years ; or
 to any person in the service of Her Majesty.

6. Every foreigner, on arriving in any part of British India
 Foreigner to report ar- in which all the provisions of this Act
 rival in India in certain are for the time being in force under
 cases. an order issued as provided in the last
 preceding section, from any port or place not within British
 India, or from any port or place within British India where all
 the provisions of this Act are not in force, shall, if he arrive at
 a presidency-town, forthwith report himself to the Commissioner
 of Police of such town, or, if he arrive at any other place, then
 he shall forthwith report himself to the Magistrate of the district,
 or to such other officer as shall be appointed to receive such
 reports by the Governor-General of India in Council or by the
 Local Government of such place.

7. The report shall be in writing, and shall be signed by the
 person reporting himself, and shall speci-
 What to be stated in re- fy his name or names, the nation to
 port. which he belongs, the place from which
 he shall have come, the place or places of his destination, the
 object of his pursuit, and the date of his arrival in such presidency-
 town or other place.

The report shall be recorded by the officer to whom it is
 made.

Foreigners, being masters of vessels or employed therein, when to report.

der of a vessel or employed therein ;

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander

but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

11. Licenses under this Act may be granted by the Governor-General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government, as the case may be or by such other officers as shall be specially authorized to grant license by the Governor-General of India in Council, or by any of the Local Governments.

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

13. The license may be granted subject to such condition as the Governor-General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary.

Any license may be revoked at any time by the Governor-General of India in Council or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force, and in which the foreigner holding the same may be or by the officer who granted the license.

14. If any foreigner travel in, or attempt to pass through, any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall

Foreigner travelling without, or contrary to conditions of, license may be apprehended.

violate any of the conditions therein specified he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps controlled by authority of Government whilst on duty or by any police-officer.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate, and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and taken to be carried before the Magistrate of the district.

Whenever any person shall be apprehended by a person not exercising any of the powers of a Magistrate, he shall immediately report to the Magistrate of the district, and such Government Magistrate shall immediately report the case to the Local Government to which he is subordinate, and cause the person brought before him to be discharged, or to be conveyed to any of the presidency-towns, or, pending the order of such Government to be detained.

16. Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorized to grant licenses, and shall be detained as little inconvenience as possible during his detention.

17. The Local Government of any part of British India, which all the provisions of this Act shall be in force, may, for the time being in force, cause any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India by sea or by such other route as the said Local Government may direct, or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as the said Local Government shall see fit.

The Governor-General of India in Council may exercise all the powers given by this section to any Local Government.

18. The Governor-General of India in Council may, by order, prohibit any person or persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV, chapter 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may for the time being be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order,

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district and dealt with under the provisions of section 17 in the same manner as if he were a foreigner ;

and the Governor-General of India in Council may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

19. The Local Government of any presidency or place in which all the provisions of this Act may for the time being be in force may by order prohibit any person, or any class of persons not being natural-born subjects of Her Majesty within the meaning of Statute 3 and 4 William IV., chapter 85 section 81, from travelling in or passing through such presidency or place, or any part thereof, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order.

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner ;

and the Local Government may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in section 6 of this Act, or for any police officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all provisions of this Act may for the time being be in force in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel :

and it shall be lawful for such Commissioner of Police, Magistrate, or other officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose ;

and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid.

If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

21. If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a justice of the Peace, be liable to a fine not exceeding two thousand rupees.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

24. All fines imposed under this Act may "be recovered in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts."*

25 *Power to exempt from provisions of Act—Repealed by Act 10 of 1914.*

* The words quoted have been substituted for certain words repealed by Act XII of 1891.

ACT XV. OF 1864.

The Indian Tolls Act 1864.*

RECEIVED THE G. G.'S ASSENT ON THE 24TH MARCH 1864.

An Act to amend Act VIII. of 1851 (for enabling Government to levy Tolls on Public Roads and Bridges)

WHEREAS by Act VIII. of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*),

Preamble.

authority was given for the levy of certain rates of toll, not exceeding the rates mentioned in the schedule annexed to that Act, and whereas it is expedient to make certain alterations in respect to the rates in the said schedule mentioned; It is enacted as follows:

1. In any place to which this Act shall be extended by the Local Government, the schedule to the said Schedule of Act VIII. of 1851 repealed, and another substituted. Act VIII. of 1851 shall be of no effect except as to any proceedings pending at the time at which this Act shall be so extended, and except as to any rate of toll levied theretofore:

and all the provisions of the said Act, applicable or referring to the rates of toll mentioned in the said schedule shall be applicable and refer to the rates of *toll* mentioned in the schedule to this Act annexed, which shall be read with and taken as part of the said Act VIII. of 1851.

2. Any person entrusted with the management of the collection of tolls under Act VIII. of 1851 may in his discretion, compound for any period not exceeding one year with any person for a certain sum to be paid by such person

*This title has been given by the Indian Short Titles Act (XV. of 1897), Repealed locally by Bom. Act III, of 1875

Act XV of 1864 has been declared in force in the Sathal Pargana, by Reg. (III. of 1872), s. 3, as amended by Reg. (III of 1899); s. 3, in the Central Provinces by Act (XX of 1875), s. 3; in the Punjab by Act (VIII of 1888), s. 1; in Upper Burma (except the Shan States) by Act XIII of 1898), s. 4.

It has been declared, under the Scheduled Districts Act (XIV, of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohardága, and Máubhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum

... See *Gazette of India* ... 1881,

Pt. I, p. 504.

The District of Hazara Pesháwar, Kohát, Bannu, Dera Ismail Khan, and Dera Gházi Khán

... Ditto ... 1886, Pt. I., p. 48.
The District of Lahaul Ditto ... 1888, Pt. I., p. 301

It has been extended under the same Act to the Scheduled District of Coorg.—See *Gazette of India*, 1878, Pt. I., p. 45

for himself or for any vehicle or animal kept by him, in lieu of the rates of toll specified in the schedule to the said Act VIII. of 1851 or in the schedule to this Act.

3. The Local Government may extend this Act to any place in which the said Act VIII. of 1851 is in force; and the Local Government of any place in which the said Act VIII. of 1851 is not in force may extend the said Act VIII. of 1851 and this Act to such place.*

4. For the purposes of this Act, the words, "Local Government" shall denote the person authorised by law to administer executive government in any part of the territories vested in Her Majesty by the Statute 21 and 22 Vict., cap. 106, entitled "An Act for the better government of India."

SCHEDULE.

	Rs.	As.	P.
On every four-wheeled carriage	2	0	0
On every two-wheeled carriage	1	0	0
On every ekka	0	1	0
On every hackery on springs	0	2	0
On every cart and hackery not on springs drawn by eight bullocks, buffaloes, horses, ponies, asses or mules, if laden	1	8	0
Ditto, if not laden	0	8	0
On every cart and hackery drawn by six bullocks, buffaloes, horses, ponies, asses or mules, if laden	0	12	0
Ditto, if not laden	0	6	0
On every cart or hackery drawn by four bullocks, buffaloes, horses, ponies, asses or mules, if laden	0	8	0
Ditto, if not laden	0	1	0
On every cart and hackery drawn by two bullocks, buffaloes, horses, ponies, asses or mules if laden	0	4	0
Ditto, if not laden	0	2	0
Buffaloes or bullocks, per head, if laden	0	1	0
Ditto, if not laden	0	0	6
On every elephant	1	8	0
On every camel, if laden	0	8	0
Ditto, if not laden	0	4	0
On every horse, if laden or ridden	0	1	6
Ditto, unladen or led	0	0	9
On every tattu or mule, if laden or ridden	0	0	9
Ditto, unladen or led	0	0	6
On every ass, if laden or ridden	0	0	6
Ditto, unladen or led	0	0	3
On every sheep, or goat, or pig	0	0	1
On every palankeen, Duli, palna or tonjon with eight bearers ..	1	0	0
Ditto, with six bearers	0	12	0

* Both Acts appear to apply to the Punjab (Barkley, *Non-Regulation Law of the Punjab*, pp. 379, 380), and have been extended to Oudh (*Gazette of India* 1st July 1865, p. 777), and the Central Provinces (*ibid.*, 12th August 1871, p. 611); and to Lower Burma—See Notification No. 66, dated the 20th February 1892.

Ditto, with four bearers	...	...	...	...	0	8	0
Ditto, with two bearers	...	...	...	...	0	4	0
On every foot-passenger	...	...	...	...	0	0	3

N. B—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

ACT III. OF 1865.

The Carriers' Act, 1865.*

RECEIVED THE G.-G.'S ASSENT ON 14TH FEBRUARY 1865.

An Act relating to the rights and liabilities of Common Carriers.

WHEREAS it is expedient, not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried,

Preamble.

*Act III. of 1865 has been declared to be in force in the whole of British India except as regards the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

Sindh	...	...	...	...	See <i>Gazette of India</i> , ... 1881, Pt. I., p. 672
West Jalpaiguri, the Western Hills of Darjeeling, the Darjeeling Tarai, and and the Damsan Sub-division of the Darjeeling district	...	...	...	Ditto	... 1881, Pt. I., p. 74
The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	...	...	Ditto	... 1881, Pt. I., p. 504
The Porhat estate in the District of Singhbhum	...	...	...	Ditto	... 1897, Pt. I., p. 1059
Kumaon and Garhwal	...	...	...	Ditto	... 1876, Pt. I., p. 605
The scheduled portion of the Mirzapur District	...	...	...	Ditto	... 1878, Pt. I., p. 385
Jaunsar Bawar	...	...	...	Ditto	... 1878, Pt. I., p. 382
The District of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	...	...	Ditto	... 1886, Pt. I., p. 48
The Scheduled Districts of the Central Provinces	...	...	...	Ditto	... 1879, Pt. I., p. 771
The District of Silhat	...	...	...	Ditto	... 1879, Pt. I., p. 631
The rest of Assam (except the North Lushai Hills)	...	...	...	Ditto	... 1897, Pt. I., p. 299

It has been extended, under the same act, to the following Scheduled Districts, namely :—

The North-Western Provinces Tarai	See <i>Gazette of India</i> 1876, Pt. I., p. 505
Ajmere and Marwara	Ditto ... 1877, Pt. I., p. 605

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., 301.

It has been repealed as to carriers by rail by Act IV. of 1879.

It has been declared in force in Upper Burma (except the Shan State) by Act XIII. of 1898, s. 4; in the Santhal Parganas by Reg. III of 1872, s. 3, as amended by Reg III of 1899, s. 3; and in the Arakan District (with a modification) by Reg (IX of 1874), s. 3

but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal act of themselves, their servants, or agents ; It is enacted as follows :—

Short title. **1. This Act may be cited as "The Carriers' Act, 1865."**

Interpretation-clause. **2. In this Act, unless there be something repugnant in the subject or context,—**

"Common carrier" denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately :

"Person" includes any association or body of persons, whether incorporated or not : *

NOTES.

Vide 3 N. W. P. H. C. R. 198.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared, to such carrier or his agent, the value and description thereof.†

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix :

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited, in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

* Here certain words which were repealed by Act 10 of 1914 have been omitted.

† "The earlier sections extend to India the principle embodied in the English Statute 11 Geo. IV and 1 Wm. IV c. 68"—*Statement of Objects and Reasons.*

5. In case of the loss of or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared, and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice ; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII of 1863,* may, by special contract, signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

NOTES.

Vide 10 C 166 (F B) = 13 C. L. R. 342 ; 18 C 620 = 18 I. A. 121 ; 17 C. 39.

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Land-acquisition Act,* for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract ; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the

* See now Act I of 1894 (Land Acquisition).

* criminal act of the carrier or any of his agents or servants "and shall also be liable to the owner for loss or damage to any such property, other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants."

NOTES.

Vide 34C 419=11 C. W. N. 1071.

9. In any suit brought against a common carrier for the loss
 Suits against carriers damage or non-delivery of goods entrusted,
 for loss not required to to him for carriage, it shall not be necessary
 prove negligence, &c. for the plaintiff to prove that such loss,
 damage, or non-delivery was owing to the negligence or criminal
 act of the carrier, his servants, or agents.

NOTES.

This section has been framed in accordance with the English common-law.—
 See *Ross v Hill* 2 Com. B 890; *Richard v Lord Brighton*, and *S. G. Roy Co.*
 7 Com. B. 829 See also 38C. 28=9 Ind. Cas. 364.

Burden of proof—The burden of proving absence of negligence on the
 company's part lies on the company 26C 398=28 I. A. 1=3C. W. N. 145;
 24C. 787; 24C. 786=1C. W. N. 200; 3B 120; 11C. W. N. 1076. Although by
 section 9, it is not necessary for the plaintiffs to prove this negligence or criminal
 act, yet it is necessary that such negligence or criminal act should in the
 case of loss of or damage to articles included in the list either appear or be
 necessarily inferred, where there has been no declaration. P. R. 13 of 1860.

10. ‡ No suit shall be instituted against a common carrier for
 Notice of loss or injury to the loss of, or injury to, goods entrusted to
 be given within six months. him for carriage, unless notice in writing of
 the loss or injury has been given to him before the institution of
 the suit and within six months of the time when the loss or injury
 first came to the knowledge of the plaintiff.

NOTES.

Section 10 of the common carriers Act as amended by Act X of
 1899 placed a Steamship Company in the same position as a Railway Company
 and makes it obligatory upon a person wanting to sue Steamer Company to
 give notice of such suit within the time mentioned in the section. 8 (J. L. J. 192.
 The plaintiff must before suit give notice of loss to the carrier. It is not enough
 that the carrier has delivered knowledge of the loss aliunde. 38C. 50. So also
 in the case of damage for short delivery. 41 Ind Cas. 919.

* Certain words here have been omitted by Act XIII of 1921.

† The words under quotations have been added by Act XIV 1921.

‡ Section 10 has been added by the Indian carrier Act 1899 (Act X of 1899) s. 2.

11. † The Governor General in Council, by notification in the Gazette of India, added to the list of articles contained in the Schedule to this Act, and the Schedule shall on the issue of any such notification, be deemed to have been amended accordingly.

SCHEDULE.

Gold and silver coin.	Writings.
Gold and silver in a manufactured or unmanufactured state.	Title-deeds.
Precious stones and pearls.	Gold or silver plate, or plated articles.
Jewellery.	Glass.
Time pieces of any description.	China.
Trinkets.	Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Bills and hundis.	Shawls and lace.
Currency-notes of the Government of India, or notes of any Banks, or securities for payment of money, English or foreign.	Cloths and tissues embroidered with the precious metals, or of which such metals form part.
Stamps and stamped paper.	Articles of ivory, ebony, or sandal-wood.
Maps, prints, and works of art.	

† Section 11 has been added by Act XIV of 1921.

ACT X. OF 1865.

The Indian Succession Act.

ARRANGEMENT OF SECTIONS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
2. Act to constitute law of British India in cases of intestate or testamentary succession.
3. Interpretation-clause.
4. Interests and powers not acquired nor lost by marriage.

PART II.

OF DOMICILE.

5. Law regulating succession to deceased person's immoveable and moveable property respectively.
6. One domicile only affects succession to moveables.

7. Domicile of origin of person of legitimate birth.
8. Domicile of origin of illegitimate child.
9. Continuance of domicile of origin.
10. Acquisition of new domicile.
11. Special mode of acquiring domicile in British India.
12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.
13. Continuance of new domicile.
14. Minor's domicile.
15. Domicile acquired by woman on marriage.
16. Wife's domicile during marriage.
17. Minor's acquisition of new domicile.
18. Lunatic's acquisition of new domicile.
19. Succession to moveable property in British India, in absence of proof of domicile elsewhere.

SECTIONS.

PART III.

OF CONSANGUINITY.

20. Kindred or consanguinity.
21. Lineal consanguinity.
22. Collateral consanguinity.
23. Persons held for purpose of succession to be similarly related to deceased.
24. Mode of computing degrees of kindred.

PART IV.

OF INTESTANCY.

25. As to what property deceased considered to have died intestate.
26. Devolution of such property.
27. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.
28. Where intestate has left no widow and where he has left no kindred

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY—

(a)—*Where he has left Lineal Descendants.*

29. Rules of distribution.
30. Where intestate has left child or children only.
31. Where intestate has left no child, but grandchild or grandchildren.
32. Where intestate has left only great-grandchildren or remoter lineal descendants.
33. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote descend are dead.

(b)—*Where the intestate has left no Lineal Descendants.*

34. Rules of distribution where intestate has left no lineal descendants.
35. Where intestate's father living.
36. Where intestate's father dead, but his mother, brothers, and sisters, living.
37. Where intestate's father dead, and his mother, a brother, or sister, and children of any deceased brother or sister, living.

SECTIONS.

38. Where intestate's father dead, and his mother and children of any deceased brother or sister living.
39. Where intestate's father dead, but his mother living, and no brother, sister, nephew, or niece.
40. Where intestate has left neither lineal descendant, nor father nor mother.
41. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.
42. Children's advancements not to be brought into hotchpot.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

43. Rights of widower and widow respectively.
44. Effect of marriage between person domiciled and one not domiciled in British India
45. Settlement of minor's property in contemplation of marriage.

PART VII.

OF WILLS AND CODICILS.

46. Persons capable of making wills.
47. Testamentary guardian.
48. Will obtained by fraud, coercion or importunity.
49. Will may be revoked or altered.

PART VIII.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Execution of unprivileged wills.
51. Incorporation of papers by reference.

PART IX.

OF PRIVILEGED WILLS.

52. Privileged will.
53. Mode of making, and rules for executing privileged wills.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

54. Effect of gift to attesting witness.
55. Witness not disqualified by interest or by being executor.

SECTIONS.

56. Revocation of will by testator's marriage.
Power of appointment defined.
57. Revocation of unprivileged will or codicil.
58. Effect of obliteration, interlineation, or alteration in unprivileged will.
59. Revocation of privileged will or codicil.
60. Revival of unprivileged will.
Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

PART XI.

OF THE CONSTRUCTION OF WILLS.

61. Wording of will.
62. Inquiries to determine questions as to object or subject of will.
63. Misnomer or misdescription of object.
64. When words may be supplied.
65. Rejection of erroneous particulars in description of subject.
66. When part of description may not be rejected as erroneous.
67. Extrinsic evidence admissible in case of latent ambiguity.
68. Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.
69. Meaning of clause to be collected from entire will.
70. When words may be understood in restricted sense, and when in sense wider than usual.
71. Which of two possible constructions preferred.
72. No part rejected, if it can be reasonably construed.
73. Interpretation of words repeated in different parts of will.
74. Testator's intention to be effectuated as far as possible.
75. The last of two inconsistent clauses prevails.
76. Will or bequest void for uncertainty.
77. Words describing subject refer to property answering description at testator's death.
78. Power of appointment executed by general bequest.
79. Implied gift to objects of power in default of appointment.

SECTIONS.

80. Bequest to "heirs," &c., of particular person without qualifying terms.
81. Bequest to "representatives," &c., of particular person.
82. Bequest without words of limitation.
83. Bequest in alternative.
84. Effect of words describing a class added to bequest to a persons.
85. Bequest to class of persons under general description only.
86. Construction of terms.
87. Words expressing relationship denote only legitimate relatives, or, failing such relatives, reputed legitimate.
88. Rules of construction where will purports to make two bequests to same person.
89. Constitution of residuary legatee.
90. Property to which residuary legatee entitled.
91. Time of vesting of legacy in general terms.
92. In what case legacy lapses.
93. Legacy does not lapse if one of two joint legatees die before testator.
94. Effect of words showing testator's intention to give distinct shares.
95. When lapsed share goes as undisposed of.
96. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.
97. Bequest to A for benefit of B does not lapse by A's death.
98. Survivorship in case of bequest to described class.

PART XII.

OF VOID BEQUESTS.

99. Bequest to persons by particular description, who is not in existence at testator's death.
100. Bequest to person not in existence at testator's death, subject to prior bequest.
101. Rule against perpetuity.
102. Bequest to a class some of whom may come under rules in sections 100 and 101.
103. Bequest to take effect on failure of bequest void under section 100, 101, or 102.
104. Effect of direction for accumulation.

SECTIONS.

105. Bequest to religious or charitable uses.

PART XIII.

OF THE VESTING OF LEGACIES.

- 106 Date of vesting of legacy when payment or possession postponed.
 107. Date of vesting when legacy contingent upon specified uncertain event.
 108. Vesting of interest in bequest to such members of a class as shall have attained particular age.

PART XIV.

OF ONEROUS BEQUESTS.

109. Onerous bequest.
 110. One of two separate and independent bequests to same person may be accepted, and the other refused.

PART XV.

OF CONTINGENT BEQUESTS.

111. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.
 112. Bequest to such of certain persons as shall be surviving at some period not specified.

PART XVI.

OF CONDITIONAL BEQUESTS.

113. Bequest upon impossible condition.
 114. Bequest upon illegal or immoral condition.
 115. Fulfilment of condition precedent to vesting of legacy.
 116. Bequest to A and, on failure of prior bequest, to B.
 117 When second bequest not to take effect on failure of first.
 118. Bequest over, conditional upon happening or not happening of specified uncertain event.
 119. Condition must be strictly fulfilled.
 120. Original bequest not affected by invalidity of second.
 121. Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

SECTIONS.

122. Such Condition must not be invalid under section 107.
 123. Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.
 124. Performance of condition, precedent or subsequent, within specified time.
 Further time in case of fraud.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.
 126. Direction that mode of enjoyment of absolute bequest is to be restricted to secure specified benefit for legatee.
 127. Bequest of fund for certain purposes, some of which cannot be fulfilled.

PART XVIII.

OF BEQUESTS TO AN EXECUTOR.

128. Legatee named as executor cannot take unless he shows intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

129. Specific legacy defined.
 130. Bequest of sum certain where stocks &c., in which invested are described.
 131. Bequest of stock where testator had at date of will, equal or greater amount of stock of same kind.
 132. Bequest of money where not payable until part of testator's property disposed of in certain way.
 133. When enumerated articles not deemed specifically bequeathed.
 134. Retention, in form of, specific bequest to several persons in succession.
 135. Sale and investment of proceeds of property bequeathed to two or more persons in succession.

SECTIONS.

136. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies

PART XX.

OF DEMONSTRATIVE LEGACIES.

137. Demonstrative legacy defined.
138. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

PART XXI.

OF ADEMPITION OF LEGACIES.

139. Ademption explained.
140. Non-ademption of demonstrative legacy.
141. Ademption of specific bequest of right to receive something from third party.
142. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.
143. Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.
144. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.
145. Ademption where stock, specifically bequeathed does not exist at testator's death.
146. Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.
147. Non-ademption of specific bequest of goods described as connected with certain place by reason of removal.
148. When removal of thing bequeathed does not constitute ademption.
149. When thing bequeathed is a valuable to be received by testator from third person ; and testator himself or his representative receives it.
150. Change by operation of law of subject of specific bequest between date of will and testator's death.
151. Change of subject without testator's knowledge.

SECTIONS.

152. Stock specifically bequeathed, lent to third party on condition that it be replaced
153. Stock, specifically bequeathed, sold but replaced and belonging to testator at his death.

PART XXII.

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

154. Non-liability of executor to exonerate specific legatees.
155. Completion of testator's title to things bequeathed to be at cost of his estate.
156. Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.
157. Exoneration of specific legatee's stock in Joint Stock Company.

PART XXIII.

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. Bequest of thing described in general terms.

PART XXIV.

OF BEQUESTS OF THE INTERESTS OR PRODUCE OF A FUND.

159. Bequest of Interest or produce of fund.

PART XXV.

OF BEQUESTS OF ANNUITIES.

160. Annuity created by will payable for life only, unless contrary intention appears by will.
161. Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.
162. Abatement of annuity.
163. Where gift of annuity, and residuary gift whole annuity to be first satisfied.

PART XXVI.

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Creditor *prima facie* entitled to legacy as well as debt.

SECTION 3.

165. Child *prima facie* entitled to legacy as well as portion.
 166. No ademption by subsequent provision for legatee.

PART XXVII.

ON ELECTION.

167. Circumstances in which election takes place.
 168. Devolution of interest relinquished by owner.
 169. Testator's belief as to his ownership immaterial.
 170. Bequest for man's benefit how regarded for purpose of election.
 171. Person deriving benefit indirectly not put to election.
 172. Person taking in individual capacity under will may, in other character, elect to take in opposition.
 173. When acceptance of benefit given by will constitutes election to take under will.
 174. Presumption arising from enjoyment by legatee for two years.
 175. Confirmation of bequest by act of legatee.
 176. When testator's representatives may call upon legatee to elect.
 Effect of non-compliance.
 177. Postponement of election in case of disability.

PART XXVIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

178. Property transferable by gift made in contemplation of death.
 When gift said to be made in contemplation of death.
 Such gift resumbale.
 When it fails.

PART XXIX.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. Character and property of executor or administrator as such.
 180. Administration with copy annexed of authenticated copy of will proved abroad.
 181. Probate only to appointed executor.
 182. Appointment, express or implied.

SECTIONS.

183. Persons to whom probate cannot be granted.
 184. Grant of probate to several executors simultaneously or at different times.
 185. Separate probate of codicil discovered after grant of probate.
 Procedure when different executors appointed by codicil.
 186. Accrual of representation to surviving executor.
 187. Right as executor or legatee when established.
 188. Effect of probate.
 189. To whom administration may not be granted.
 190. Right to intestate's property when established.
 191. Effect of letters of administration.
 192. Acts not validated by administration.
 193. Grant of administration where executor has not renounced.
 Exception.
 194. Form and effect of renunciation of executorship.
 195. Procedure where executor renounces or fails to accept within time limited.
 196. Grant of administration to universal or residuary legatee.
 197. Right to administration of representative of deceased residuary legatee.
 198. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
 199. Citation before grant of administration to legatee other than universal or residuary.
 200. Order in which connections entitled to administer.
 201. Administration to widow unless Court see cause to exclude her.
 202. Association with widow in administration.
 203. Administration where no widow or widow excluded.
 Proviso.
 204. Title of kindred to administration.
 205. Right of widower to administration of wife's estate.
 206. Grant of administration to creditor.
 207. Grant of administration where property left in British India.

SECTION^s.

PART XXX.

OF LIMITED GRANTS—

(a)—*Grants limited in Duration.*

- 208. Probate of copy or draft of lost will.
- 209. Probate of contents of lost or destroyed will.
- 210. Probate of copy where original exists.
- 211. Administration until will produced.

(b)—*Grants for the Use and Benefit of Others having Right.*

- 212. Administration, with will annexed, to attorney of absent executor.
- 213. Administration, with will annexed, to attorney of absent person who, if present, would be entitled to administer.
- 214. Administration to attorney of absent person entitled to administer in case of intestacy.
- 215. Administration during minority of sole executor or residuary legatee.
- 216. Administration during minority of several executors or residuary legatees.
- 217. Administration for use and benefit of lunatic *jus habens*.
- 218. Administration *pendente lite*.

(c)—*For Special Purposes.*

- 219. Probate limited to purpose specified in will.
- 220. Administration with will annexed limited to particular purpose.
- 221. Administration limited to property in which person has beneficial interest.
- 222. Administration limited to suit.
- 223. Administration limited to purpose of becoming party to suit to be brought against administrator.
- 224. Administration limited to collection and preservation of deceased's property.
- 225. Appointment, as administrator, of person other than one who under ordinary circumstances, would be entitled to administration.

SECTION^s.(d)—*Grants with Exception.*

- 226. Probate or administration with will annexed, subject to exception.
- 227. Administration with exception.

(e).—*Grants of the Rest.*

- 228. Probate or administration of rest
- (f)—*Grants of Effects unadministered.*

- 229. Grant of effects unadministered.
- 230. Rules as to grants of effects unadministered.
- 231. Administration when limited grant expired, and still some part of estate unadministered.

(g).—*Alteration in Grants.*

- 232. What errors may be rectified by Court.
- 233. Procedure where codicil discovered after grant of administration with will annexed.

(h)—*Revocation of Grants.*

- 234. Revocation or annulment for just cause. "Just cause."

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION,

- 235. Jurisdiction of District Judge in granting and revoking probates, &c.
- 235 A. Power to appoint Delegate or District Judge to deal with non-contentious cases.
- 236. District Judge's powers as to grant of probate and administration.
- 237. District Judge may order person to produce testamentary papers.
- 238. Proceedings of District Judge's Court in relation to probate and administration.
- 239. When and how District Judge to interfere for protection of property.
- 240. When probate or administration may be granted by District Judge.
- 241. Disposal of application made to Judge of district in which deceased had no fixed abode.
- 241 A. Probate and letters of administration may be granted by Delegate.

SECTIONS.

242. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c, granted by High Court.
- 242A. Transmission to High Courts of certificate of grants under proviso to action 242.
243. Conclusiveness of application for probate or administration if properly made and verified.
244. Petition for probate.
245. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
246. Petition for letters of administration.
- 246A. Addition to statements in petition for probate, &c,
247. Petition for probate or administration to be signed and verified.
248. Verification of petition for probate by one witness to will.
249. Punishment for false averment in petition or declaration.
250. District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings.
Publication of citation.
251. Caveats against grant of probate or administration.
252. Form of caveat.
253. After entry of caveat, no proceeding taken on petition until after notice to caveator.
- 253A. District Delegate when not to grant probate or administration.
- 253B. Power to transmit statement to District Judge in doubtful cases where no contention.
- 253C. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
254. Grant of probate to be under seal of Court.
Form of such grant.
255. Grant of letters of administration to be under seal of Court.
Form of such grant.
256. Administration-bond.
257. Assignment of administration-bond.
258. Time for grant of probate and administration.

SECTIONS.

259. Filing of original wills of which probate or administration with will annexed granted.
260. Grantee of probate or administration alone to sue, &c, until same revoked.
261. Procedure in contentions cases.
262. Payment to executor or administrator before probate or administration revoked.
Right of such executor or administrator to recoup himself.
263. Appeals from orders of District Judge.
264. Concurrent jurisdiction of High Court.
- 264A. Removal of executor
- 264B. Directions to executor.

PART XXXII,

OF EXECUTORS OF THEIR OWN WRONG.

265. Executor of his own wrong.
266. Liability of executor of his own wrong.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

267. In respect of causes of action surviving deceased and rents due at death.
268. Demands and rights of action of or against deceased survivor to and against executor or administrator.
269. Power of executor or administrator to dispose of property.
- 269A. General Powers of administration.
- 269B. Commission or Agency charges.
270. Purchase by executor or administrator of deceased's property.
271. Powers of several executors or administrators exercisable by one.
272. Survival of powers on death of several executors or administrators.
273. Powers of administrators of effect unadministered.
274. Powers of administrator during minority.
275. Powers of married executrix or administratrix.

SECTIONS.

PART XXXIN.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

- 276. As to deceased's funeral.
- 277. Inventory and account.
- 277A. Inventory to include property in any part of British India in certain cases.
- 278. As to property of, and debts owing to, deceased.
- 279. Expenses to be paid before all debts.
- 280. Expenses to be paid next after such expenses.
- 281. Wages for certain services to be next paid, and then other debts.
- 282. Save as aforesaid, all debts to be paid equally and rateably.
- 283. Application of moveable property to payment of debts, where domicile not in British India.
- 284. Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.
- 285. Debts to be paid before legacies.
- 286. Executor or administrator not bound to pay legacies without indemnity.
- 287. Abatement of general legacies. Executor not to pay one legatee in preference to another.
- 288. Non-abatement of specific legacy when assets sufficient to pay debts.
- 289. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
- 290. Rateable abatement of specific legacies.
- 291. Legacies treated as general for purpose of abatement.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

- 292. Assent necessary to complete legatee's title.
- 293. Effect of executor's assent to specific legacy. Nature of assent.
- 294. Conditional assent.
- 295. Assent of executor to his own legacy implied assent.
- 296. Effect of executor's assent.
- 297. Executor when to deliver legacies.

SECTIONS.

PART XXXVI.

ON THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

- 298. Commencement of annuity when no time fixed by will.
- 299. When annuity, to be paid quarterly or monthly, first falls due.
- 300. Dates of successive payments when first payment directed to be made within given time, or on day certain.

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

- 301. Investment of sum bequeathed where legacy, not specific, given for life.
- 302. Investment of general legacy to be paid at future time. Intermediate interest.
- 303. Procedure when no fund charged with, or appropriated to, annuity.
- 304. Transfer to residuary legatee of contingent bequest.
- 305. Investment of residue bequeathed for life, without direction to invest in particular securities.
- 306. Investment of residue bequeathed for life, with direction to invest in specified securities.
- 307. Time and manner of conversion and investment. Interest payable until investment.
- 308. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

- 309. Legatee's title to produce of specific legacy.
- 310. Residuary legatee's title to produce of residuary fund.
- 311. Interest when no time fixed for payment of general legacy.
- 312. Interest when time fixed.
- 313. Rate of interest.
- 314. No interest on arrears of annuity within first year after testator's death.
- 315. Interest on sum to be invested to produce annuity.

SECTIONS.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

316. Refund of legacy paid under Judge's orders.
317. No refund if paid voluntarily.
318. Refund when legacy has become due on performance of condition within further time allowed under section 124.
319. When each legatee compellable to refund in proportion.
320. Distribution of assets.
Creditor may follow assets.
321. Creditor may call upon legatee to refund.
322. When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.
323. When unsatisfied legatee must first proceed against executor, if solvent.
324. Limit to refunding of one legatee to another.
325. Refunding to be without interest.
326. Residue after usual payments to be paid to residuary legatee.

SECTIONS.

- 326A. Transfer of assets from British India to executor or administrator in country of domicile for distribution.

PART XI.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. Liability of executor or administrator for devastation.
328. Liability of executor for neglect to get in any part of property.

PART XII.

MISCELLANEOUS.

329. } [Repealed.]
330. }
331. Succession to property of Hindus, &c., and certain wills, intestacies, and marriages not affected.
332. Power of Governor-General in Council to exempt any race, sect, or tribe in British India from operation of Act.
333. Surrender of revoked probate or letter of administration.
- SCHEDULE. [Repealed.]

ACT X OF 1865.*

The Indian Succession Act

RECEIVED THE G. G. 'S ASSENT ON THE 16TH MARCH 1865.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India ; it is enacted

Preamble,

as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Succession Act, 1865."

*Act X, of 1865 has been declared in force in—

2. Except as provided by this Act, or by any other law for

Act to constitute law of British India in cases of intestate or testamentary succession.

the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or

testamentary succession.

Interpretation-clause.

3.† In this Act, unless there be something repugnant in the subject or context,—

Words importing the singular number include the plural ;
Number. words importing the plural number include
Gender. the singular ; and words importing the male

sex include females :

“Person.” “Person” includes any company or association, or body of persons, whether incorporated or not :

“Year.” “Year” and “month” respectively mean a
“Month.” year and month reckoned according to the

British calendar :

“Immoveable property” includes land, incorporeal tenements, and things attached to the earth or permanently fastened to anything which is attached to the earth :

(1) the Santhal Parganas (see Reg. III, of 1812, s. 3 as amended by Reg. III, of 1899);

(2) the Arakan Hill District (but not so as to affect Native Christians) see Reg. IX of 1874, s 3)

(3) Upper Burma generally (except the Shan States), (see Act XIII. of 1898, s. 4);

(4) British Baluchistan (see Reg. I of 1890, s 3)

(5) Arakan Hill District (except ss. 329 and 330 and the Schedule), but not so as to affect Native Christians, by Reg. (IX. of 1874), s 3,

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874) to be in force in the following Scheduled Districts :—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum—See *Gazette of India* 1881 Pt 1, p 504.

The North-Western Provinces Tarai...See *Gazette of India*, 1876, Pt. I, p, 565

As to the application of portions of the Act to the wills of Hindus, Jains, Sikhs, and Buddhists, in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, see the Hindu Wills Act (XXI of 1870)

As to the exemption of Parsis from portions of the Act, see the Parsi Intestate Succession Act (XXI. of 1865). For further exemptions from the Act, see ss. 331, 332, *infra*

As to exception of Native Christians from ss. 190 and 239, see Act (VII of 1901) s. 8

† Compare Probate and Administration Act (V, of 1881), s. 3.

"Moveable property," "Moveable property" means property of every description except immoveable property :

"Province," "Province" includes any division of British India having a Court of the last resort ;

"British India" means the territories which are or may become vested in Her Majesty or Her Successors by the Statute 21 & 22 Vict., cap. 106 (*An Act for the better government of India*),*

"District Judge," "District Judge" means the Judge of a principal Civil Court of original jurisdiction.

"Minor"† means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person :

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will.

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part ; and,

"High Court"‡ shall mean the highest Civil Court of Appeal therein.

*Here certain words repealed by the Repealing Act [(XII, of 1891) have been omitted,

† See Act IX, of 1875, s. 3,

‡ The definition of "High Court," has been added by the Probates and Letters of Administration Act (XIII, of 1875), s. 1 ; but certain portion has been repealed in Lower Burma by the Lower Burma Courts Act (VI, of 1890).

4. No person shall, by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.*

Interests and powers not acquired nor lost by marriage.

PART II.

OF DOMICILE.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India wherever he may have had his domicile at the time of his death.

Law regulating succession to deceased person's immoveable and moveable property respectively.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations

(a) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(b) A, an Englishman having his domicile in France, dies in British India and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

6. A person can only have one domicile for the purpose of succession to his moveable property.

One domicile only affects succession to moveables

7. The domicile of origin of every person of legitimate birth in the country in which at the time of his birth, his father was domiciled : or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Domicile of origin of person of legitimate birth.

Illustration,

At the time of the birth of A his father was domiciled in England, A's domicile of origin is in England whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which at the time of his birth his mother was domiciled.

Domicile of origin of illegitimate child.

* "This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed, at the time of the marriage the Hindu, Mahomedan, Buddhist, Sikh, or Jaina religion,"—Married Women's Property Act (III, of 1874), s. 2, last para,

9. The domicile of origin prevails until a new domicile has
 Continuance of domicile been acquired.
 of origin.

10. A man acquires a new domicile by taking up his fixed
 Acquisition of new dome- habitation in a country which is not that
 cile. of his domicile of origin.

Explanation:—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a.) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b.) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c.) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d.) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence, acquire a domicile in British India, however long the residence may last.

(e.) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f.) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not, by such residence, acquire a domicile in British India.

(g.) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by
 Special mode of acquiring making and depositing in some office in
 domicile in British India British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

12. A person who is appointed by the Government of one country to be its ambassador, consul, or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent if the minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Except in the cases above provided for, a person cannot, during minority acquire a new domicile

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Lunatic's acquisition of new domicile.

Succession to moveable property in British India in absence of proof of domicile elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.*

OF COSANGUINITY.

Kindred or consanguinity.

20 Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

* Part III. does not apply to Parsis —See the Parsi Intestate Succession Act, (XXI. of 1865), s. 8.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father, and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half-blood;

nor between those who were actually born in his life-time, and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

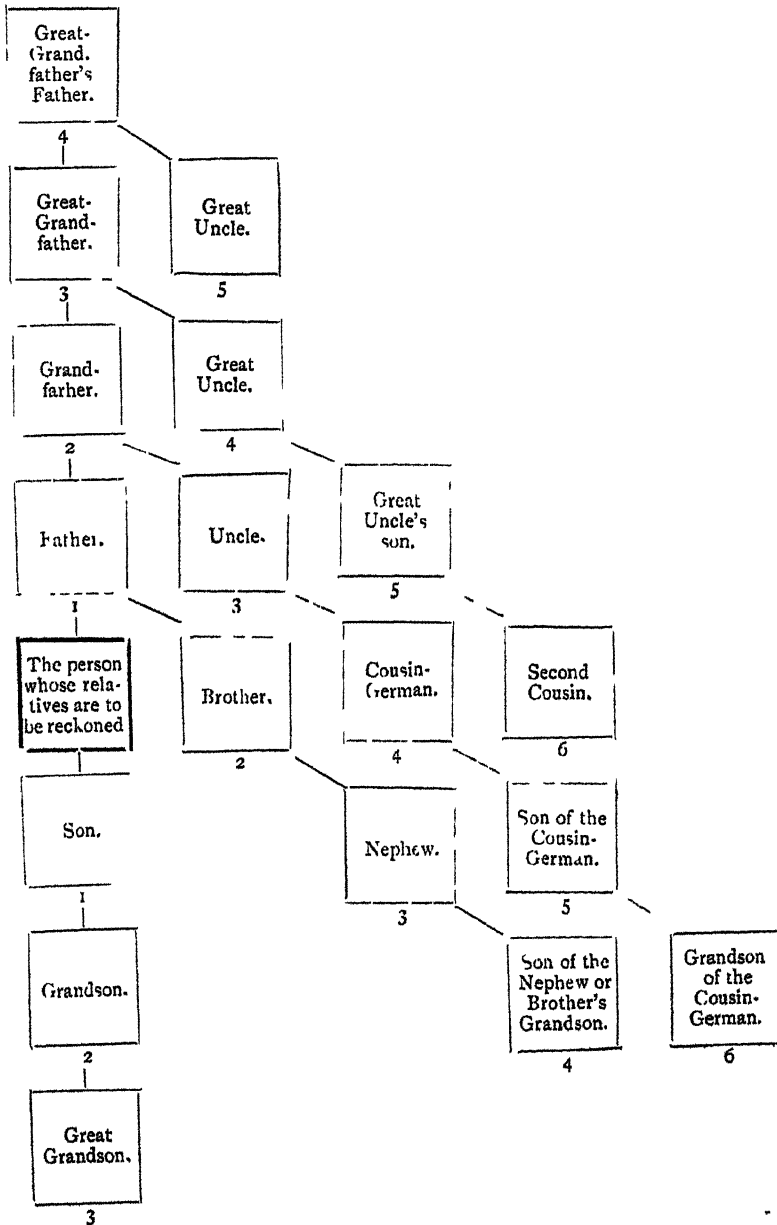
24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i.e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



PART IV.*

OF INTESTACY.

25. A man is considered to die intestate in respect of all

As to what property deceased considered to have died intestate.

property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(a.) A has left no will. He has died intestate in respect of the whole of his property.

(b.) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c.) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d.) A has bequeathed 1,000*l.* to B and 1,000*l.* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l.*

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased,

Devolution of such property.

in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if, by a valid contract made before her marriage, she has been excluded from the distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

any lineal descendants, one-third of his property shall belong to his widow, and the remaining two thirds shall go to his lineal descendants according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

28. Where the intestate has left no widow, his property shall

Where intestate has left no widow, and where he has left no kindred.

go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained; and if he has left none who are of

kindred to him, it shall go to the Crown.

* Part IV, (excepting s. 25) does not apply to Parsis.—See the Parsi Intestate Succession Act (XXI. of 1865) s. 8.

PART V.†

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY—

(a.)—Where he has left Lineal Descendants.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follow:—

Rules of distribution.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child if there be only one, or shall be equally divided among all his surviving children.

Where intestate has left child or children only.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, he property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Where intestate has left no child, but grandchild or grandchildren.

Illustrations.

(a.) A has three children, and no more; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b.) But, if Henry has died leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c.) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where intestate has left only great-grandchildren or remoter lineal descendants.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote descend are dead.

† Part V. does not apply to Parsis—See the Parsi Intestate Succession Act (XXI. of 1865). s. 8. I. C. A.—67.

stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him ; and

one of such shares shall be allotted to each of the lineal descendants who stood in th nearest degree of kindred to the intestate at his decease ; and

one of such shares shall be allotted in respect of each such deceased lineal descendants ; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be ; such surviving child or children or remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively, if such parent or parents had survived the intestate.

Illustrations.

(a) A had three children, John, Mary, and Henry ; John died leaving four children, and Mary died leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild ; and remaining one-ninth is equally divided between the two great-grandchildren.

(c.) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry ; one third to Mary's child ; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b).—Where the intestate has left no Lineal Descendants.

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follow:—

35. If the intastate's father be living he shall succeed to the property.

Where intestate's father
iving.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister, shall succeed to the property in equal shares.

Where intestate's father
dead, but his mother,
brothers, and sisters living.

Illustration.

A dies intestate survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brothers or sister who may have died in the intestate's life-time, are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead, and his mother a brother or sister, and children of any deceased brother or sister, living.

Illustration.

A, the intestate, leaves his mother, his brothers, John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father, but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead, and his mother and children of any deceased brother or sister living.

Illustration.

A, the intestate, leaves no brother or sister but leaves his mother, and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate's father dead, but his mother living, and no brother, sister, nephew, or niece.

40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of

Where intestate has left neither lineal descendant, nor father, nor mother.

them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

¹ Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations.

(a.) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate. uncles and aunts being only in the third degree.

(b.) A, the intestate, has left a great-grandfather or great-grandmother and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these, being in the third degree shall take equal shares.

(c.) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these, being in the third degree, shall take equal shares.

(d.) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by Children's advancements a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given, or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE SETTLEMENTS ON PROPERTY.

43.* The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Rights of widower and widow respectively.

*S. 43 does not apply to Parsis—See the Parsi Intestate Succession Act (XXI of 1865), s. 8

44. If a person whose domicile is not in British India, marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

PART VII *

OF WILLS AND CODICILS.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.†

Explanation 2—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(a.) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

* Of Part VII, ss. 46, 48, and 49, apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—Hindu Wills Act (XXI, of 1870), s. 2.

† As to property which a married woman may dispose of by her own act, vide the married woman's property Act, 1874 (3 of 1874).

(b.) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions, This instrument is not a valid will,

(c.) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian. **47.** A father, whatever his age may be, may, by will, appoint a guardian or guardians for his child during minority.

48. A will or any part of a will, the making of which has Will obtained by fraud, been caused by fraud or coercion, or by coercion, or importunity. such importunity as takes away the free agency of the testator, is void.

Illustrations.

(a.) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his (A's) favour, such will has been obtained by fraud, and is invalid.

(b.) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c.) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d.) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e.) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(f.) A, being in so feeble a state of health as to be unable to resist importunity is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(g.) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h.) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.
Will may be revoked or altered.

PART VIII.*

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition or engaged in actual warfare or a mariner at sea, must execute his will according to the following rules:—

Execution of unprivileged wills.

First.—The testator shall sign or shall affix his mark to the will or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

Incorporation of papers by reference.

PART IX.

OF PRIVILEGED WILLS.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in section 53.

Privileged will.

Such wills are called privileged wills.

Illustrations.

(a). A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

* Part VIII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2.

(b.) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea can make a privileged will.

(c.) A, a soldier surving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d.) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e.) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f.) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier and can make a privileged will.

Mode of making, and rules
for executing, privileged
wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

the execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator with his own hand, In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not to be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his life-time, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by a word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband ;

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified by interest or by being executor,

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.*

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required

* Of Part X, ss. 55 and 57 to 60 (both inclusive) apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI, of 1870), s. 2.

to be executed, or by the burying, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction with the intention of revoking the same.

Illustrations.

(a.) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b.) A has made an unprivileged will. Afterwards A, being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is a revocation.

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will.

59. A privileged will or codicil, may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI *

OF THE CONSTRUCTION OF WILLS.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Wording of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact, a knowledge of which may conduce to the right application of the words which the testator has used.

Enquiries to determine questions as to object or subject of will.

Illustrations.

(a.) A, by his will, bequeaths 1,000 rupees to his eldest son,† or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b.) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c.) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name of description shall not prevent the legacy from taking effect.

Misnomer or mis-description of object.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

* Of Part XI., ss. 61-77 (both inclusive), 82, 83, 85, and 88 to 98 (both inclusive), apply to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2

† In applying ss. 62, 63, 92, 96, 98, 99, 100, 101, 102, and 103 of the said Succession Act to wills and codicils made under this Act (XXI. of 1870), the words, "son", "sons", "child," and "children," shall be deemed to include an adopted child; and the word, 'grandchildren,' shall be deemed to include the children, whether adopted or natural-born; of a child, whether adopted or natural-born; and the expression, "daughter-in-law," shall be deemed to include the wife of an adopted son.—Hindu Wills Act (XXI. of 1870), s. 6.

Illustrations,

(a.) A bequeaths a legacy, "to Thomas, the second son* of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b.) A bequeaths a legacy "to Thomas, the second son of his brother John," The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c) The testator bequeaths his property "to A and B, the legitimate children of C," C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d) The testator gives his residuary estate to be divided among "his seven children,"* and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e) The testator, having six grandchildren,* makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f.) The testator bequeaths "1000 rupees to each of the three children* of A. At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1000 rupees.

When words may be supplied. **64.** Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration,

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Rejection of erroneous particulars in description of subject.

Illustrations,

(a.) A bequeaths to B, "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X," shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b.) The testator bequeaths to A "his zamindari of Rampur," He had an estate at Rampur, but it was a taluq. and not a zamindari. The taluq passes by this bequest.

* See Hindu Wills Act (XXI, of 1870), s, 6

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator has other property to which such part of the description does not apply.

Explanation.—In judging wheather a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struk out of the will.

Illustrations.

(a.) A, bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class or to the whole taken together. The measurement shall be considered as struk out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustration.

(a.) A man, having two cousins, of the name of Mary, bequeaths a sum of money to, "his cousin, Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications only one of which can have been intended by testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his will, leaves to B "his state called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity of deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a.) A, man has an aunt Caraline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to his aunt Caroline

and 1,000 rupees to his cousin Mary and afterwards bequeaths 2,000 rupees to his "before mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under section 76.

(b.) A bequeaths 1,000 rupees to _____, leaving a blank for the name of the legatee. Evidence is not not admissible to show what name the testator intended to insert.

(c.) A bequeaths to B _____ rupees or "his estate of _____." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts collected from entire will. _____ are to be construed with reference to each other, and for this purpose a codicil is to be considered as a part of the will.

Illustrations.

(a.) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use, in a restricted sense, the words in which he describes what he gives to A.

(b.) Where a testator, having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(a.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L" are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c.) A, by his will, bequeathed to B all his household furniture, plate, linen, china books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

Which of two possible constructions preferred.

No part rejected if it can be reasonably construed.

Interpretation of words repeated in different parts of will.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

73. If the same words occur in different part of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

74. The intention of the testator is not to be set aside, because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Testator's intention to be effectuated as far as possible.

Illustration.

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 105, but it shall take effect so far as regards the gift to C D.

The last of two inconsistent clauses prevails.

75. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(a.) The testator, by the first clause of his will, leaves his estate of Ramnagar "to A," and, by the last clause of his will, leaves it to B, and not "to A." B shall have it,

(b.) If a man, at the commencement of his will, gives his house to A, and at the close of it directs that his house shall be sold, and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A," or, "I bequeath to A," or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or, "I bequeath 'money,' 'wheat,' 'oil,' " or the like, without saying how much, this is void.

Words describing subject refer to property answering description at testator's death.

77. The description contained in a will, of property, the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power ;

Power of appointment executed by general bequest.

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being made, if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares,

Implied gift to objects of power in default of appointment.

Illustration.

A, by his will bequeathed a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

80. Where a bequest is made to the "heirs" or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Bequest to "heirs" &c., of particular person without qualifying terms.

Illustrations.

(a.) A leaves his property, "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b.) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it, if it had formed a part of A's unbequeathed property.

(c.) A leaves his property to B ; but if B dies before him, to B's next of kin. B dies before A. The property devolves as if it belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d.) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives" or "legal representatives" or "personal representatives" or, executors or administrators, of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid : if there be any surplus B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

82.* Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

83.* Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect ; but if he be then dead, the person or the class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a.) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b.) A bequest is made to A or to B. A dies after the date of the will and before the testator. The legacy goes to B.

(c.) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d.) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e.) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f.) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survives the testator. B dies in A's life-time. Upon A's death the bequest to the heirs of B takes effect.

(g.) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

* Ss. 82 and 83 apply the wills of Hindus, &c., in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI of 1870), s. 2.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(a) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants ;
to A and his representatives,
to A and his personal representatives,
to A, his executors, and administrators ;

In each of these cases, A takes the whole interest which the testator had in the property.

(b.) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c.) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85.* Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only.

86. The word “children” in a will applies only to lineal descendants in the first degree ;

the word “grandchildren” applies only to lineal descendants in the second degree of the person whose “children” or “grandchildren” are spoken of ;

the words “nephews” and “nieces” apply only to children of brothers or sisters ;

the words “cousins,” or “first cousins” or “cousins-german,” apply only to children of brothers or of sisters of the father or mother of the person whose “cousins,” or “first cousins,” or “cousins-german,” are spoken of ;

* S. 85 applies to the wills of Hindus, &c. in the, Lower Provinces of Bengal, and in the towns of Madras and Bombay—Hindu Wills Act (XXI, of 1870), s. 2.

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed," are spoken of ;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins " are spoken of ;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

87. In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.

Illustrations.

(a.) A, having three children, B, C, and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares to the exclusion of D.

(b.) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c.) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d.) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B, are objects of the gift.

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88.* Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of, or in addition to, the first, if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

Rules of construction where will purports to make two bequests to same person.

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will, and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word “will” does not include a codicil.

Illustrations.

(a.) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words, “I bequeath my ten shares in the Bank of Bengal to B.” After other bequests, the will concludes with the words, “and I bequeath my ten shares in the Bank of Bengal to B.” B is entitled simply to receive A’s ten shares in the Bank of Bengal.

(b.) A, having one diamond ring which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c.) A by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d.) A by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e.) A by his will, bequeaths to B 5,000 rupees, and by a codicil to the will, he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f.) A by one codicil to his will bequeaths to B 5,000 rupees and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

*This section and ss. 89-103 both inclusive apply to the wills of Hindus &c., in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—Hindu Wills Act (XXI. of 1870) s. 2.

(g.) A, by his will, bequeaths "500 rupees to B, because she was his nurse and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(h.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(i.) A, by his will bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Constitution of residuary legatee.

Illustrations.

(a.) A makes her will, consisting of several testamentary papers, in one of which are contained the following words: "I think there will be something left, after funeral expenses, &c., to give to B, now at school towards equipping him to any profession he may hereafter be appointed to" B is constituted residuary legatee.

(b.) A makes his will with the following passage at the end of it: "I believe there will be found sufficient in my banker's hands to defray and discharge my debts which I hereby desire B to do, and keep the residue for her own use and pleasure. B is constituted the residuary legatee.

(c.) A bequeaths all his property to B except certain stocks and funds which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death of which he has not made any other testamentary disposition which is capable of taking effect.

Property to which residuary legatee entitled.

Illustration.

A, by his will bequeaths certain legacies one of which is void under section 105 and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zemindari which belongs to him at the time of his death. B is entitled to the two legacies and the zemindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having receiving it, it shall pass to his representatives.

Time of vesting of legacy in general terms,

92. If the legatee does not survive the testator the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In what case legacy lapses.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations

(a.) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator. The legacy lapses.

(b.) A bequest is made to A and his children.* A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c.) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A for life, and after his death to B. A dies in the life-time of the testator; B survives the testator. The bequest to B takes effect.

(e.) A sum of money is bequeathed to A on his completing his eighteenth years, and, in case he should die before he completes his eighteenth year to B. A completes his eighteenth year and dies in the life-time of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f.) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.
Legacy does not lapse if one of two joint legatees die before testator.

Illustration

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of testator's property.
Effect of words showing testator's intention to give distinct shares.

Illustration

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.
When lapsed share goes as undisposed of.

Illustration

The testator bequeaths the residue of his estate A, B and C to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

* See Hindu Wills Act (XXI of 1870) s. 6,

96. Where a bequest shall have been made to any child* or other lineal descendent of the testator, and the legatee shall die in the life-time of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's life-time.

Illustration

A makes his will, by which he bequeaths a sum of money to his son* B for his own absolute use and benefit. B dies before A leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's life-time, of the person to whom the bequest is made.

Bequest to A for benefit of B does not lapse by A's death.

98. Where a bequest is made simply to a described class of persons the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to described class.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a.) A bequeaths 1,000 rupees to "the children* of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D, and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b.) A bequeaths a legacy to the children* of B. At the time of the testator's death, B has no children. The bequest is void.

(c.) A lease for years of a house was bequeathed to A for his life, and after his decease to the children* of B. At the death of the testator, B had two children living C and D; and he never had any other child. Afterwards, during the life-time of A, C died leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d.) A sum of money was bequeathed to A for her life, and after her decease to the children* of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the life-time of A, C having made a will, E having made no will. A

* See Hindu Wills Act (XXI, of 1870), s.6.

has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e.) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(f.) A bequeaths 1,000 rupees to B for life, and after his death equally among the children* of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g.) A bequeaths 1,000 rupees to "all the children,* born or to be born," of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the life-time of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after born child of B.

(h.) A bequeaths a fund to the children* of B, to be divided among them when the eldest shall attain majority. A the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E to the exclusion of any child who may be born to B after C's attaining majority.

PART XII. †

OF VOID BEQUESTS.

Bequest to person by particular description who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a.) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

* See Hindu Wills Act (XXI. of 1870), s. 6.

† Of Part XII., ss 99 to 103 (both inclusive) apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act, (XXI. of 1870), ss. 2 and 6, as amended by the Probate and Administration Act (V. of 1881), s. 154.

(b.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(c.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(d.) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B, and is alive at B's death. C's son is entitled to the 1,000 rupees.

100 Where a bequest is made to a person not in existence

Bequest to person not in existence at testator's death, subject to a prior bequest. at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c.) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(d.) A bequeaths a sum of money to B for life, and directs that, upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons

* See Hindu Wills Act (XXI. of 1870), s. 6.

not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains in the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the life-time of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations,

(a.) A fund is bequeathed to A for his life ; and after his death to B for his life ; and after B's death to such of the sons* of B as shall first attain the age of 25. A and B survive the testator. Here the son of B, who shall first attain the age of 25, may be a son born after the death of the testator ; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B ; and the vesting of the fund may thus be delayed beyond the life-time of A and B and the minority of the sons of B. The bequest after B's death is void.

(b.) A fund is bequeathed to A for his life ; and after his death to B for his life ; and after B's death to such of B's sons* as shall first attain the age of 25. B dies in the life-time of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease and the time when either of them will attain 25 necessarily falls within his own life-time. The bequest is valid.

(c.) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18 ; but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d.) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled, so as to devolve after her death upon such of her children* as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

Bequest to a class, some of whom may come under rules in sections 100 and 101.

Illustrations

(a.) A fund is bequeathed to A for life, and after his death to all his children* who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a

*See Hindu Wills Act (XXI. of 1870), s. 6.

bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death ; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children* of A who shall attain the age of 25. B, C, D, are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a.) The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

103. Where a bequest is void by reason of any of the rules

Bequest to take effect on failure of bequest void under section 100, 101, or 102.

contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(a.) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25. for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(b.) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons* as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

104. A direction to accumulate the income arising from any

Effect of direction for accumulation.

property shall be void ; and the property shall be disposed of as if no accumulation had been directed.

Exception—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death ;

and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a.) The will directs that the sum of 10,000 rupees shall be invested in Government securities and the income accumulated for 20 years, and that the principal, together with the accumulation, shall then be divided between A, B, and C. A, B, and C, are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b.) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c.) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d.) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years and that the accumulation shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e.) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

105. No man having a nephew or niece or any nearer relative Bequest to religious or shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustrations

A, having a nephew, makes a bequest by a will not executed nor deposited as required—

- for the relief of poor people ;
- for the maintenance of sick soldiers ;
- for the erection or support of a hospital ;
- for the education and preferment of orphans ;
- for the support of scholars ;
- for the erection or support of a school ;
- for the building and repairs of a bridge ;
- for the making of roads ;
- for the erection or support of a church ;
- for the repairs of a church ;
- for the benefit of ministers of religion ;
- for the formation or support of a public garden ;

↳ All these bequests are void.

PART XIII.*

OF THE VESTING OF LEGACIES.

106. Where, by the terms of a bequest, the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's

* Part XIII. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI, of 1870), s. 2.

death, and shall pass to the legatee's representatives if he dies before that time, and without having received the legacy.

And in such cases the legacy is, from the testator's death, said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(a.) A bequeaths to B 100 rupees to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(b.) A bequeaths to B 100 rupees to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(c.) A fund is bequeathed to A for life, and after his death to B. On the testator's death, the legacy to B becomes vested in interest in B.

(d.) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(e.) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(f.) A fund is bequeathed to A, B, and C in equal shares to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B, and C, subject to be divested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that

age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(a.) A legacy is bequeathed to D in case A, B, and C, shall all die under the age of 18. D has a contingent interest in the legacy until A, B, and C all die under 18, or one of them attains that age.

(b.) A sum of money is bequeathed to A "in case he shall attain the age of 18," or "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by attaining that age.

(c.) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B and C, survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d.) An estate is bequeathed as in case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(e.) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B with a proviso that, if she shall not attain 18, and or marry under that age without B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attain, the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(f.) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(g.) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h.) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i.) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j.) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which make the fulfilment of the condition impossible.

(k.) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l.) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m.) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18, has a vested interest in the bequest.

PART XIV.*

OF ONEROUS BEQUESTS.

- 109.** Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.
- Onerous bequest.

Illustration.

A, having shares in (X), a prosperous joint-stock company, and also shares in (Y), a joint-stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint-stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and the other refused.

- 110.** Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them, and refuse the other, although the former may be beneficial, and the latter onerous.

Illustration.

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not, by his refusal, forfeit the money.

PART XV.†

OF CONTINGENT BEQUESTS.

- 111.** Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.
- Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

* Part XIV. applies to the wills of Hindus, Jainas, Sikhs and Bhuddhists in the lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act, (XXI. of 1870), s. 2.

† Part XV. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI of 1870). 2.

Illustrations.

(a.) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testor, the legacy to B does not take effect.

(b.) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator, or dies in his life-time leaving a child, the legacy to B does not take effect.

(c.) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(d.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning "in case B shall die without children during the life-time of A."

(e.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the life-time of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Illustrations.

(a.) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b.) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A ; C survives A. At A's death the legacy goes to C.

(c.) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator ; B survives the testator, but dies in the life-time of A. The legacy goes to the representative of B.

(d.) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the life time of A, the whole shall go to the survivor. B dies in the life-time of A. Afterwards C dies in the life-time of A. The legacy goes to the representative of C.

PART XVI*

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

* Part XVI. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2.

Illustrations.

(a.) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b.) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(a.) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b.) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent to vesting of legacy.

Illustrations.

† (a.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D, and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries in the life-time of B, C, and D, with the consent of B and C only. A has not fulfilled the condition.

(d.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A obtains the unconditional assent of B, C, and D, to his marriage with E. Afterwards B, C, and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries without the consent of B, C, and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f.) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the life-time of A, and A afterwards express his approbation of the marriage. A dies. The bequest to B takes effect.

(g.) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person, and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Bequest to A, and, on failure of prior bequest, to B.

of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior

Illustrations.

(a.) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b.) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's life-time. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

When second bequest not to take effect on failure of first.

of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that

Illustration.

A makes a bequest to his wife, but in case she should die in his life-time, bequeaths to B that which he had bequeathed to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition superadded that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or that, in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

Bequest over, conditional upon happening or not happening of specified uncertain event.

that, in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in the sections 107, 108, 109, 110, 111, 112, 113, 114, 116 and 117.

Illustrations.

(a.) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b.) An estate is bequeathed to A, with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c.) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's life-time.

(d.) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money and the representatives of B takes the other half.

(e.) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's life-time. The bequest over cannot take effect, but the interest, of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last Condition must be strictly fulfilled. preceding section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(a.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, C, and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower, and marries again without the consent of B. The bequest to C does not take effect.

(c.) A legacy is bequeathed to A, to be paid at 18, or marriage with a proviso that, if he dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18 without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(a.) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not, on a given day, walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b.) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c.) An estate is bequeathed to A for life, and if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

uncertain event shall not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified

Illustrations.

(a.) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the the wood ; he loses his life-interest in the estate.

(b.) An estate is bequeathed to A, provided that, if he marries under the age of 25, without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c.) An estate is bequeathed to A provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d.) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e.) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the life-time of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to

Such condition must not be invalid under section 107.

have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the 107th. section.

123. Where a bequest is made with a condition superadded

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to grow over.

that, unless the legatee shall perform a certain act, the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(a.) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b.) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee within a specified time, either as condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

PART XVII.*

OF REQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Illustrations.

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations.

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

*Part XVII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal; and in the towns of Madras and Bombay.—Hindu Wills Act. (XXI. of 1870), s. 2.

(b.) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but Bequest of fund for certain purposes, some of which cannot be fulfilled. gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations,

(a.) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and, at his death, shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.*

OF BEQUESTS TO AN EXECUTOR.

Legatee named as executor cannot take unless he shows intention to act as executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will, or otherwise manifests an intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.*

OF SPECIFIC LEGACIES.

129. Where a testator bequeaths to any person a specified part of his property which is distinguished from all other parts of his property, the legacy is said to be specific.

* Parts XVIII and XIX. apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI, of 1870), s 2.

Illustrations.

(a) A bequeaths to B—

- "the diamond-ring presented to him by C ;"
- "his gold chain ;"
- "a certain bale of wool ;"
- "a certain piece of cloth ;"
- "all his household-goods, which shall be in or about his dwelling-house, in M Street, in Calcutta, at the time of his death :"
- "the sum of 1,000 rupees in a certain chest ;"
- "the debt which B owes him ;"
- "all his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta ;"
- "all his furniture in his house in Calcutta"
- "all his goods on board a certain ship then lying in the river Hugli ;"
- "2,000 rupees which B has in the hands of C ;"
- "the money due to him on the bond of D :"
- "his mortgage on the Rampur factory :"
- "one-half of the money owing to him on his mortgage of Rampur factory ;"
- "1,000 rupees, being part of a debt due to him from C :"
- "his capital stock of 1,000*l*. in East India Stock :"
- "his promissory notes of the Government of India, for 10,000 rupees, in their four per cent. loan :"
- "all such sums of money as his executors may, after his death, receive, in respect of the debt due to him from the insolvent firm of D and Company :"
- "all the wine which he may have in his cellar at the time of his death :"
- "such of his horses as B may select :"
- "all his shares in the Bank of Bengal"
- "all the shares in the Bank of Bengal which he may possess at the time of his death :"
- "all the money which he has in the 5½ per cent. loan of the Government of India :"
- "all the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(b.) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(c.) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(d.) A bequeaths to B—

- his house in Calcutta :
- his zamindari of Rampur :
- his taluq of Ramnagar :
- his lease of the indigo-factory of Salkya :
- an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(e.) A, by his will, charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D.

Each of these bequests is specific.

(f.) A bequeaths a sum of money—

- to buy a house in Calcutta for B :
- to buy an estate in zilla Faridpur for B.
- to buy a diamond-ring for B.
- to buy a horse for B :
- to be invested in shares in the Bank of Bengal for B.
- to be invested in Government securities for B :

A bequeaths to B—

- "a diamond-ring :"
- "a horse ;"
- "10,000 rupees worth of Government securities :"
- "an annuity of 500 rupees" :
- "2,000 rupees to be paid in cash" :
- "so much money as will produce 5,000 rupees four per cent Government securities ;"

These bequests are not specific

(g.) A having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

Bequest of sum certain where stocks, &c., in which invested are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested, are described in the will.

Illustration.

A bequeaths to B—

- "1000 rupees of his funded property :"
- "10,000 rupees of his property now invested in shares of the East Indian Railway Company :"
- 10,000 rupees at present secured by mortgage of Rampur factory."

No one of these legacies is specific.

131. Where a bequest is made, in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had, at the date of the will five per cent Government securities for 5,000 rupees.

The legacy is not specific.

132. A money-legacy is not specific merely because the will

Bequest of money where not payable until part of testator's property disposed of in certain way.

directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

133. Where a will contains a bequest of the residue of the

When enumerated articles not deemed specifically bequeathed

testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

134 Where property is specially bequeathed to two or

Retention; in form, of specific bequest to several persons in succession.

more persons in succession it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustration.

(a.) A, having a lease of a house for a term of years 15 of which were unexpected at the time of his death, has bequeathed the lease to B for his life and after B's death to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b.) A having an annuity during the life of B bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

135. Where property comprised in a bequest to two or more

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in

such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.*

OF DEMONSTRATIVE LEGACIES.

137. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same, the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that,

where specified property is given to the legatee, the legacy is specific :

where the legacy is directed to be paid out of a specified property, it is demonstrative.

Illustration.

(a.) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific ; the legacy to C is demonstrative.

(b.) A bequeaths to B—

“ten bushels of the corn which shall grow in his fields of Greenacre:”

“80 chests of the indigo which shall be made at his factory of Rampur :”

“10,000 rupees out of his five per cent. promissory notes of the Government of India.”

“an annuity of 500 rupees from his funded property ”

“1,000 rupees out of the sum of 2000 rupees due to him by C.”

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Ramnagar.

A bequeaths to B—

“10,000 rupees out of his estate at Ramnagar, or charges it on his estate at Ramnagar :”

“10,000 rupees, being his share of the capital embarked in a certain business.”

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed, and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees ; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

* Part XX. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2.

PART XXI.*

OF ADEMPMENT OF LEGACIES

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed ; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Ademption explained.

Illustrations.

(a.) A bequeaths to B—

“the diamond-ring presented to him by C.”

“his gold chain.”

“a certain bale of wool.”

“a certain piece of cloth.”

“all his household-goods which shall be in or about his dwelling house in M street in Calcutta, at the time of his death.”

A, in his lifetime—

sells or gives away the ring;

converts the chain into a cup;

converts the wool into cloth;

makes the cloth into a garment;

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(b.) A bequeaths to B—

“the sum of 1,000 rupees in a certain chest.”

“all the horses in his stable.”

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(c.) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind ; but it shall, in such case, be paid out of the general assets of the testator.

Non-ademption of demonstrative legacy.

Ademption of specific bequest of right to receive something from third party.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

* Part XXI. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2.

Illustrations.

(a.) A bequeaths to B—

"the debt which C owes him;"
 "2,000 rupees he has in the hands of D;"
 "the money due to him on the bond of E;"
 "his mortgage on the Rampur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(b.) A bequeaths to B "his interest in certain policies of life-assurance." A in his life-time receives the amount of the policies. The legacy is adeemed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed, shall operate as an ademption of the legacy to the extent of the sum so received.

Ademption pro tanto by testator's receipt of part of entire thing specifically bequeathed.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption pro tanto by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his life-time receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied, so far as it will extend, in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock specifically bequeathed does not exist at testator's death

145. Where stock, which has been specifically bequeathed, does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock ;"

"his promissory notes of the Government of India for 10,000 rupees in their four per cent. loan.

A sells the stock and the notes. The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

the stock which has ceased to exist.

146. Where stock, which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed, so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B "his 10,000 rupees in the 5½ per cent. loan of the Government of India." A sells one-half of his 10,000 rupees in the loan in question, One-half of the legacy is adeemed.

147. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

Illustrations

A bequeaths to B "all his household goods which shall be in or about his dwelling house in Calcutta at the time of his death. The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in

When removal of thing bequeathed does not constitute ademption.

which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath,

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him, then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

149. Where the thing bequeathed is not the right to receive something of value from a third person,

When thing bequeathed is a valuable to be received by testator from third person; and testator himself or his representative receives it.

but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other

commodity by the testator shall not constitute an ademption;

but, if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustrations.

A bequeaths to B whatever sum may be received from his claim on C. A receives to whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Change by operation of law of subject of specific bequest between date of will and testator's death.

a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal

instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's life-time into five per cent. stock

A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India, which he has power, under his marriage-settlement, to dispose of by will. Afterwards in A's life-time, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed,

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of subject without testator's knowledge.

Illustration.

A bequeaths to B "all his three per cent. Consols." The Consols are, without A's knowledge sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

152. Where stock, which has been specifically bequeathed, is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

153. Where stocks specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased, and belongs to the testator at his death, the Legacy is not adeemed.

Stock specifically bequeathed sold but replaced, and belonging to testator at his death.

PART XXII.*

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

154. Where property specifically bequeathed is subject, at the death of the testator, to any pledge, lien, or incumbrance, created by the testator himself, or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

Non-liability of executor to exonerate specific legatees

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

*Explanation :—*A periodical payment in the nature of land revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

* Part XXII. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—Hindu Wills Act (XXI.) of 1870, s. 2.

Illustration.

(a.) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(b.) A bequeaths to B a zamindari, which, at A's death, is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustration

(a.) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(b.) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue, or in the nature of rent, has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

157. In the absence of any direction in the will where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate ;

Exoneration of specific legatee's stock in joint-stock company.

but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest,

Illustrations.

(a.) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b.) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 5*l.* in respect of each share which sum must be paid before his title to the share can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title

(c.) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d.) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each share-holder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e.) A is the owner of ten shares in a railway company. At a meeting held during his life-time a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B if he accepts the legacy must pay the remaining instalment.

PART XXIII.*

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Bequest of thing described in general terms.

Illustrations.

(a.) A bequeaths to B a pair of carriage-horses, or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(b.) A bequeaths to B "his pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

* Part XXIII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI of 1870), s. 2.

PART XXIV.*

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A
FUND.

159. Where the interest or produce of a fund is bequeathed
 Bequest of interest or to any person, and the will affords no indi-
 produce of fund. cation of an intention that the enjoyment
 of the bequest should be of limited duration, the principal as well
 as the interest shall belong to the legatee.

Illustrations.

(a.) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(b.) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life ; and C is entitled to the notes upon B's death.

(c.) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.*

OF BEQUESTS OF ANNUITIES.

160. Where an annuity is created by will, the legatee is en-
 Annuity created by will titled to receive it for his life only, unless a
 payable for life only, unless contrary intention appears by the will.
 contrary intention appears And this rule shall not be varied by the
 by will. circumstance that the annuity is directed
 to be paid out of the property generally, or that a sum of money
 is bequeathed to be invested in the purchase of it.

Illustrations.

(a.) A bequeaths to B 500 rupees a year. B is entitled, during his life, to receive the annual sum of 500 rupees.

(b.) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c.) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

* Parts XXIV. and XXV. apply to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person on the testator's death, the legacy vests in interest in the legatee, and he is entitled, at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person on the testator's death, the legacy vests in interest in the legatee, and he is entitled,

at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Illustrations.

(a.) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled, at his option, to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's life-time. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Abatement of annuity.

testator are not sufficient to pay all the legacies given by the will, the annuity shall

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the

capital of the testator's estate shall be applied for that purpose.

PART XXVI,*

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the creditor *prima facie* entitled to legacy as well as debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *prima facie* entitled to legacy as well as debt.

it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy

as well as to the amount of the debt.

* Part XXVI. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI, of 1870), s. 2.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *prima facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portion.

199. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(a.) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.*

OF ELECTION.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and, in the latter case, he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Devolution of interest relinquished by owner.

* Part XXVII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Testator's belief as to his ownership immaterial.

Illustrations.

(a.) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c.) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d.) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and whatsoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

Bequest for man's benefit how regarded for purpose of election.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultanpur Khurd, being the property of B, A bequeathed it to C; and bequeathed another farm, called Sultanpur Buzurg, to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

171. A person taking no benefit directly under the will but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death, upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator, and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity, under will, may, in other character, elect to take in opposition.

172 A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will.

Illustration.

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200l. during her life in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000l. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1000l.

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgement of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

Illustrations.

(a.) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(b.) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Confirmation of bequest by act of legatee.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election ;

When testator's representatives may call upon legatee to elect.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

177. In case of disability, the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

Postponement of election in case of disability.

PART XXVIII.*

OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

When gift said to be made in contemplation of death.

Such gift resumable.

Such a gift may be resumed by the giver.

* This Part does not apply to Hindus.—Hindu Wills Act (XXI of 1870).

When it fails.

It does not take effect if he recovers from the illness during which it was made ; nor if he survives the person to whom it was made.

Illustrations.

(a.) A, being ill, and in expectation of death, delivers to B to be retained by him in case of A's death—

a watch :
a bond granted by C to A :
a bank-note :
a promissory note of the Government of India endorsed in blank :
a bill of exchange endorsed in blank,
certain mortgage-deeds.

A dies of the illness during which he delivered these articles.
B is entitled to—

the watch :
the debt secured by C's bond :
the bank-note :
the promissory note of the Government of India :
the bill of exchange :
the money secured by the mortgage-deeds.

(b.) A, being ill, and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c.) A, being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.*

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property † of the deceased person vests in him as such.

Character and property of executor or administrator as such.

* Of Part XXIX., s. 187 applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870), s. 2, as amended by Probate and Administration Act (V. of 1881), s. 154.

As to grants of letters of administration and probates to the Administrator-General, see Act III of 1913.

Nothing in Act X of 1865 is to be taken to supersede or affect the rights or duties and privileges of the Administrator-General.—See *ibid.*, s. 66

† This does not include property vested in the deceased as executor or administrator under Act X. of 1865—12 Ben. 428, 429.

180. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

181. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law,* C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Persons to whom probate cannot be granted.

184. When several executors are appointed, probate may be granted to them all simultaneously, or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the granted probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

* See s 6, Act XXI. of 1870.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

187.* No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction† [in British India] shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration [with the will or with a copy of an authenticated copy of the will annexed.]‡

Right as executor or legatee when established.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor, as such.

Effect of probate.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

To whom administration may not be granted.

190.§ No right to any part of the property of a person who has died intestate can be established in any Court of justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Right to intestate's property when established.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

192. Letters of administration do not render valid any intermediate acts of the administrator ending to the diminution or damage of the intestate's estate.

Acts not validated by administration

* This section applies to the wills of Hindus, &c, in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—Hindu Wills Act (XXI. of 1870.)

† So far as regards the Administrator-General, the High Court at the Presidency-town is a Court of competent jurisdiction, within the meaning of ss. 187, 190, wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate—see Act III of 1913. For prohibition of charges for commission by executors or administrators other than the Administrator-General, see *ibid*.

‡ The words within brackets have been substituted by Act VIII of 1903.

§ Sec. 190 does not apply to any part of the property of a Native Christian who has died intestate Vide Act VII. of 1901.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept, or renounce his executorship ;

Grant of administration where executor has not renounced.

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

194. The renunciation may be made orally in the presence of the Judge or by a writing signed by the person renouncing, and when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

195. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.*

Procedure where executor renounces or fails to accept within time limited.

Grant of administration to universal or residuary legatee.

196. When the deceased has made a will, but has not appointed an executor ; or when he has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will ; or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased ;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

198. When there is no executor, and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,* or any other legatee

Grant of administration where no executor nor residuary legatee, nor representative of such legatee.

* See s. 6, Act XXI. of 1870.

having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

200. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity are entitled to obtain letters of administration of his estate and effects in the order, and according to the rules, here-in-after stated.

Order in which connections entitled to administer.

201. If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Administration to widow unless Court see cause to exclude her.

Illustrations.

(a.) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(b.) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

202. If the judge think proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

Association with widow in administration.

203. If there is no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate :

Administration where no widow, or widow excluded.

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to the administration.

Proviso.

Title of kindred to administration.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Right of widower to administration of wife's estate.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

Grant of administration to creditor.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

Administration where property left in British India.

PART XXX.*

OF LIMITED GRANTS.

(a.)—*Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

209. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of contents of lost or destroyed wills.

210. When the will is in the possessions of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it, be produced.

Administration until will produced.

*Compare Act V. of 1881 Ch. III with subparts (a) to (f.)

(b.) *Grants for the Use and Benefit of others having Right.*

212. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, Administration, with will annexed, to attorney of absent executor. letters of administration with the will annexed, may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

213. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his attorney, limited as above mentioned.

214. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, Administration to attorney of absent person entitled to administer in case of intestacy. letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

215. When a minor is sole executor or sole residuary legatee, Administration during minority of sole executor or residuary legatee. letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

216. When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

217. If a sole executor or a sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate according to the rule * for the distribution of intestates' estates be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

* See, *read rules.*

218. Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Administration *pendente lite*.

(c).—*For special purposes.*

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

Probate limited to purpose specified in will.

220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

Administration, with will annexed, limited to particular purpose.

221. Where a person dies, living property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to property in which person has beneficial interest.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein, and carried into complete execution.

Administration limited to suit.

223. If at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court that has granted the probate or letters of administration is situate, it shall

Administration limited to purpose of becoming party to suit to be brought against administrator.

be lawful for such Court to grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the court.

Administration limited to collection and preservation of deceased's property.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator,

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d.)—Grants with Exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Probate or administration, with will annexed, subject to exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e.)—Grants of the Rest.

228. Whenever a grant, with exception, of probate, or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate,

Probate or administration of rest.

(f.)—Grants of Effects unadministered.

229. If the executor to whom probate has been granted have died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.*

Rules as to grants of effects unadministered.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.†

Administration when limited grant expired, and still some part of estate unadministered.

(g.)—Alteration in Grants.‡

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

What errors may be rectified by Court.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

(h.)—Revocation of Grants.§

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

Revocation or annulment for just cause.

"Just cause."

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

* See Hindu Wills Act (XXI. of 1870), s. 6.

† See Hindu Wills Act (XXI. of 1870), s. 6.

‡ See Hindu Wills Act (XXI. of 1870), s. 6.

§ Compare Probate and Administration Act (V. of 1881), Ch. IV.

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

[5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV. of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.*]

Illustrations.

- (a.) The Court by which the grant was made had no jurisdiction.
- (b.) The grant was made without citing parties who ought to have been cited.
- (c.) The will of which probate was obtained was forged or revoked.
- (d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (f.) Since probate was granted, a latter will has been discovered.
- (g.) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will
- (h.) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

PART XXXI.†

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

within his district.

235. The district Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases

235A ‡ The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

* Cl. (5) has been added by Act VI. of 1889, s. 2.

† Compare Probate and Administration Act (V. of 1881), Ch. V.

‡ S. 235A has been inserted by Act VI. of 1881, s. 2.

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

District Judge may order person to produce testamentary papers.

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same ;

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code,* in case of default in not attending, or in not answering such questions, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.†

Proceedings of District Judge's Court in relation to probate and administration.

239.† Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere

When and how District Judge to interfere for protection of property.

* Act XLV. of 1860.

† This reference to Act VIII. of 1859 should now be read as applying to Act V. of 1908.—See s. 157 of the latter Act.

† This section does not apply to any part of the property of a Native Christian who has died intestate Vide Act VII of 1901.

for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the judge considers that the property incurs any risk of loss or damage ; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.*

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition, verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the judge to refuse the application, if, in his judgement it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

241A.† Probate and letters of administration may, upon application for that purpose to any District-Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death, resided within the jurisdiction of such Delegate.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout the province in which the same is "or are"‡ granted.

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

* As to the duty of the District Judge to take charge of property in certain cases and report to the Administrator-General, and his power to pay certain expenses out of the property see Act III of 1913.

† S. 241 A has been inserted by Act VI of 1881, s. 3.

‡ The words quoted have been inserted by Act XII of 1891 s. 2 (2) and s. 4.

* [Provided that probates and letters of administration granted—

(a) by a high Court, or

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the Province does not exceed ten thousand rupees, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.]

242A† (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 242, the High Court or District Judge shall send a certificate thereof to the following Court namely:—

Transmission to High Courts of certificate of grants under proviso to section 242.

(a) When the grant has been made by a High Court, to each of the other High Courts,

(b) When the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

"I, A. B., Registrar (or as the case may be) of the High Court of Judicature at _____ (or as the case may be), hereby certify that on the _____ day of _____ the High Court of Judicature at _____ (or as the case may be) granted probate of the will (or letters of administration of the estate) of C. D., late of _____, deceased, to E. F. of _____, and G. H. of _____, and that such probate (or letters) has (or have) effect over all the property of the deceased throughout the whole of British India;"

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

* The present proviso to s. 242 was added by s. 2 (2) of the Probate and Administration Act 1903 (8 of 1903).

† S. 242 A was inserted by s. 2 (3) of the Probate and Administration Act, 1903 (8 of 1903).

Conclusiveness of application for probate or administration if property made and verified.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration.

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made with the will annexed, and stating—

the time of the testator's death,
that the writing annexed is his last will and testament.
that it was duly executed,

[the amount of assests which are likely to come to the petitioner's hands, and*

that the petitioner is the executer named in the will ; *]

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased, at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge ;

[and, when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.]†

[Where the application is to the District Judge and any portion of the assests likely to come to the petitioner's hand is situate in another Province, the petition shall further state the amount of such assests in each Province, and the District Judges within whose jurisdiction such assests are situate]‡

245. In cases wherein the will is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if

In what cases translation of will to be annexed to petition.

* As ammended by Act VI. of 1881 s. 3.

† This Paragraph has been added by Act VI. of 1881 s. 4.

‡ The last paragraph was added to s. 244 by s.2 (4) of the Probate and Administration Act, 1903 (8 of 1903.)

the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

Verification of translation by person other than Court translator.

“I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating—*

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge “or District Delegate,”† to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands;

[and, when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.]‡

[Where the application is to the District Judge and any portion of the assets likely to come to the petitioners, hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.]§

|| **246A.** (1) Every person applying to any of the Courts mentioned in the proviso to section 242 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

Addition to statement in petition, etc. probate or letters of administration in certain cases.

Or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

* As to the particulars to be stated where the Administrator-General applies for letters of administration, see Act II. of 1874, s. 16.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ The paragraph has been added by Act VI. of 1881, s. 4.

§ The last paragraph was added to section 246 by Act 8 of 1903.

|| The present section 246 A has been inserted by Act VIII. of 1908.

(2) The Court to which any such application is made, under the proviso to section 242, may, if it thinks fit, reject the same.

247. The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader (if any), and shall be verified by the petitioner in the following manner, or to the like effect :—

Petition for probate or administration to be signed and verified.

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following :—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) there to (*as the case may be*) *or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence.)"

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law* for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment in petition or declaration.

District Judge may examine petitioner in person.

250. In all cases it shall be lawful for the District Judge "or District Delegate,"† if he shall think proper—

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

* See the Indian Penal Code (Act XLV. of 1860). Ch. XI.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge "or District Delegate"* issuing the same may direct.

[Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were citation issued by himself and shall certify such publication to the District Judge also issued the citation.] †.

Caveats against grant of probate or administration. **251** ‡ Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate ;

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat. **252.** The caveat shall be to the following effect :—

"Let nothing be done in the matter of the estate of A. B., late of deceased, who died on the day of at , without notice to C, D, of ."

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge "or officer" § to whom the application has been made "or notice has been given of its entry with some other Delegate,"§ until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

* The words quoted have been inserted by Act VI. of 1881, s. 9.

† The last paragraph of S. 250 was added by Act V III of 1903.

‡ S. 251 has been substituted for the one originally enacted by Act VI. of 1881, s. 5.

§ The words quoted have been inserted by Act VI. of 1881, s. 6.

253A.* A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

253B.* In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

253C.* In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

254 When it shall appear to the Judge “or District Delegate”† that probate of a will should be granted, he will grant the same under the seal of his Court in manner following:—

“ I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (here insert the limits of _____)]
 Form of such grant.

* Ss. 253A, 253B, and 253C have been inserted by Act VI. of 1881, s. 7.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

the Delegate's jurisdiction)],* hereby make known that on the day of _____, in the year _____, the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint.]]†

255. And, wherever it shall appear to the District Judge "or Grant of letters of administration to be under seal of Court. District Delegate"‡ that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following :—

"I, _____, Judge of the District of _____, [or Delegate Form of such grant. appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] § hereby make known that on the day of _____, letters of administration (with or without the will annexed, *as the case may be*,) of the property and credits of _____, late of _____, deceased, were granted to _____, the father (*or as the case may be*) of the deceased [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint.]]||

* The words in brackets (with the brackets themselves) have been inserted by Act VI. of 1881, s. 8.

† The words from "he having" to the end of the section have been substituted by Act VI. of 1889, s. 4.

‡ The words quoted have been inserted by Act VI. of 1881, s. 9.

§ The words in brackets (with the brackets themselves) have been inserted by Act VI. of 1881, s. 8.

|| The words from "he having" to the end of the section have been substituted by Act VI. of 1889, s. 5.

256. "Every person to whom any grant of letters of administration *other than a grant under section 112** Administration-bond. is committed"† shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time, by any general or special order, direct.

257. The Court may, on application Assignment of administration-bond. made by petition, and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some person, his executors, or administrators,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

258. No probate of a will shall be granted until after the Time for grant of probate and administration. expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

259. Every District Judge "or District Delegate"‡ shall file and preserve all original wills of which Filling of original wills of which probate or administration with will annexed granted. probate or letters of administration, with the will annexed, may be granted by him among the records of his Court, until some public registry for wills is established ;

and the Local Government shall make regulations§ for the preservation and inspection of the wills so filed as aforesaid.

* In s. 256 the words in italics have been inserted by Act. V of 1902, s. 9. and by Act XVIII of 1919.

† The words quoted have been substituted by Act VI. of 1889, s. 6.

‡ The words quoted have been inserted by Act VI. of 1881 s. 9.

§ For rules in force in (1) Assam see Assam Manual of Local Rules and Orders (Ed. 1893) pp. 7 to 9, (2) Burma, see Burma Rules Manual (Ed. 1897), p. 22 and (3) the North Western Provinces, see North Western Provinces and North List of Local Rules and Orders (Ed. 1894). p. 32.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or other wise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

261. In any case before the District Judge in which there is contention the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure,* in which the petitioner for probate or letters of administration as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

262. Where any probate is or letters of administration are revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure * applicable to appeals.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

* These references to Act VIII of 1859 should now be read applying to Act Act V, of 1908.—See s. 157 of the latter Act.

264A* The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

Removal of executor or administrator and provision for successor.

264B* Where probate or letters of administration in respect of any estate have been granted under this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

Directions to executor or administrator.

PART XXXII.†

OF EXECUTORS OF THEIR OWN WRONG.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Executor of his own wrong.

Exceptions.—First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral, or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustration.

(a.) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b.) A, having been appointed agent by the deceased in his life-time to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

* Section 264A and 264B have been inserted by Act XVIII of 1919.

† Part XXXII does not extend to Hindus, Jains, Sikhs or Buddhists—Hindu Wills Act (XXI of 1870)

286. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

Liability of executor of his own wrong.

PART XXXIII.*

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

In respect of causes of action surviving deceased, and rents due at death,

268. All demands whatsoever, and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code† or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Demands and rights of action of or against deceased survive to and against executor or administrator.

Illustrations.

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Power of executor or administrator to dispose of property.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells subject of it. The sale is valid.

* Part XXXIII does not extend to Hindus, Jains, Sikhs, or Buddhists. —Hindu Wills Act (XXI. of 1870). Compare Probate and Administration Act (V. of 1881), Ch. VI.

† Act XLV. of 1860.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

269A* An executor or administrator may in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him incur expenditure :—

General powers of Administration.

(a) On such acts as may be necessary for the proper care and management of any property belonging to any estate administered by him, and

(b) With the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

269B.† An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator General by or under the Administrator General's Act, 1913.

Commission or agency charges.

270. If an executor or administrator purchases either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators exercisable by one.

Illustrations.

(a.) One of several executors has power to release a debt due to the deceased.

(b.) One has power to surrender a lease.

(c.) One has power to sell the property of the deceased, moveable or immoveable.

(d.) One has power to assent to a legacy.

(e.) One has power to endorse a promissory note payable to the deceased.

(f.) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

* Section 269A has been added by Act XVIII. of 1919.

† Section 269 B, has been added by Act XVIII of 1919,

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effect unadministered.

274. An administrator during minority has all the powers of an ordinary administrator.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executor or administratrix.

PART XXXIV.*

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral.

277.† (1) An executor or administrator shall, within six months from the grant or probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

Inventory and account.

and shall in like manner, within one year from the grant, or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands, and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code,

* Part XXXIV. does not extend to Hindus, Jains, Sikhs, or Buddhists.—Hindu Wills Act (XXI. of 1870). Compare Probate and Administration Act (V. of 1881), Ch. VII.

† S. 277 has been substituted by Act VI. of 1889, s. 7.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

277A†. In all cases when a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable or immovable property situate in British India, and the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

Inventory to include property in any part of British India in certain cases.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan, or domestic servant, are next to be paid, and then the other debts of the deceased.

Wages for certain services to be next paid, and then other debts.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

† S. 277 A has been inserted by Act VIII of 1903.

Application of moveable property to payment of debts where domicile not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of "British India." *

* * * * *

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable-estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

285. Debts of every description must be paid before any legacy.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

287. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions.

Abatement of general legacies.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

* The words quoted have been substituted for the words "the country in which he was domiciled" by Act VI. of 1889, s. 9, cl. (1): and the illustration originally attached to this section has been repealed by cl. (2) of the same section.

288. Where there is a specific legacy, and the assests are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assests sufficient to pay debts.

289. Where there is a demonstrative legacy, and the assests are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and, if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets, as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assests sufficient to pay debts and necessary expenses.

290. If the assests are not sufficient to answer the debts and the specific legacies an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum Rupees 333-5-4 are to be paid to B, and Rupees 666-10-8 to C.

291. For the purpose of abatement a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

PART XXXV.*

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a.) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them without the assent of the executor.

(b.) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

* Part XXXV. does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Hindu Wills Act (XXI. of 1870). Compare Probate and Administration Act (V. of 1881), Ch. VIII.

293. The assent of the executor to a specific bequest shall be

Effect of executor's assent
to specific legacy.

sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustration.

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

294. The assent of an executor to a legacy may be condi-

Conditional assent.

tional, and if the condition be one which he has a right to enforce, and it is not performed,

there is no assent.

Illustrations.

(a.) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

295. When the executor is a legatee, his assent to his own

Assent of executor to his
own legacy.

legacy is necessary to complete his little to it in the same way as it is required when the bequest is to another person, and his assent may in like manner be expressed or implied.

Assent shall be implied, if, in his manner of administering the property, he does any act which is referable to his character of legatee, and is not refer-

Implied assent.

able to his character of executor.

Illustration.

An executor takes the rent of a house, or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.*

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Where an annuity is given by will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death ; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made.

Dates of successive payments when first payment directed to be made within given time, or on day certain.

* Part XXXVI. does not extend to Hindus, Jaines, Sikhs, or Buddhists.—Hindu Wills Act (XXI. of 1870). Compare Probate Administration Act (V. of 1881), Ch. IX.

and, if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representatives.

Apportionment where annuitant dies between times of payment.

PART XXXVII*

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed, shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy to be paid at future time.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

303. Where an annuity is given, and no fund is charged with its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased ; or

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities

Investment of residue bequeathed for life, without direction to invest in particular securities.

* Part XXXVII. does not extend to Hindus, Jainas, Sikhs or Buddhists.—Hindu Wills Act (XXI. of 1870). Compare Probate and Administration Act (V of 1881), Ch. X.

as the High Court may for the time being regard as good securities shall be converted into money, and invested in such securities.

306. When the testator has bequeathed the residue of his estate to a person for life, with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

307. Such conversion and investment as are contemplated, by the two last proceeding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom "or by whose District Delegate"* the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards:

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account:

and such payment into the Court of District Judge, or into the Court of Wards, as the Case may be, shall be a sufficient discharge for the money so paid:

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or Court Wards, as the case may be, may direct.

* The words quoted have been inserted by Act VI. of 1881, s. 8.

PART XXXVIII.*

OF THE PRODUCE AND INTEREST OF LEGACIES.

309. The legatee of a specific legacy is entitled to clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor, the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest, contingent in its terms, does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes on undisposed of.

Illustrations.

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt interest runs from the death of the testator.

* Part XXXVIII. does not extend to Hindus, Jainas, Sikhs, and Buddhists.—Hindu Wills Act (XXI. of 1870). Compare Probate and Administration Act (V. of 1881), Ch. XI.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

313. The rate of interest shall be four per cent. per annum.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.*

OF THE REFUNDING OF LEGACIES.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

318. When the time prescribed by the will for the performance of a condition has elapsed without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the 124th section for the per-

Refund when legacy has become due on performance of condition within further time allowed under section 124.

* Part XXXIX. does not extend to Hindus, Jains, Sikhs, or Buddhists.—Hindu Wills Act (XXI. of 1870). Compare Probate and Administration Act (V. of 1881), Ch. XII.

formance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

319. When the executor has paid away the assets in legacies,

When each legatee compellable to refund in proportion,

and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

320. Where an executor or administrator has given such

Distribution of assets.

notices as would have been given by the High Court in an administration suit for creditors

or others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assts,* or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution ;

but nothing herein contained shall prejudice the right of any

Creditor may follow as sets.

creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

321. A creditor who has not received payment of his debts

Creditor may call upon legatee to refund.

may† call upon a legatee who has received payment of his legacy to refund * whether the assets of the testator's estate were or

were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

322. If the assets were sufficient to satisfy all the the legacies

When legatee not satisfied, or compelled to refund under section 321, cannot oblige one paid in full to refund.

at the time of the testator's death a legatee who has not received payment of his legacy, or who has been compelled to refund under the last proceeding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him

with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

323. If the assets were not sufficient to satisfy all the legacies

When unsatisfied legatee must first proceed against executor, if solvent.

at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor, if he is solvent ; but, if

* For limitation of suits to compel a refund, see Act IX. of 1908.

† In s. 321, certain words, repealed by Act XV. of 1877. have here been omitted.

the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund the proportion.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall, in all cases, be without interest.

326. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

326A.* Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there, and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of.

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

PART XL.†

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

* S. 326 A has been inserted by Act II. of 1890. s. 9.

† Part XL. does not extend to Hindus, Jains, Sikhs, or Buddhists.—Hindu Wills Act (XXI. of 1870). Compare Probate and Administration Act, V. of 1881). Ch XIII

Illustrations.

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

Liability of executor or administrator for neglect to get in any part of property.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.*

MISCELLANEOUS.

329. *Stamps and Fees.* [Repealed by Act VII. of 1870.]

330. *Saving as to Administrator-General.* [Repealed by Act XXIV. of 1867.]

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Mahomedan, or Buddhist;† nor shall they apply to any will made, or any intestacy occurring, before the first day of January 1866.

Succession to property of Hindus, &c., and certain wills, intestacies, and marriages not affected.

* Part XLI does not extend to Hindus, Jains, Sikhs or Buddhists. — Hindu Wills Act (XXI. of 1870).

† As to wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and the towns of Madras and Bombay see now Hindu Wills Act (XXI. of 1870), as amended by Act V. of 1881, s. 154).

As to intestate succession among Parsis, see Parsi Succession Act (XXI. of 1865).

As to moveable property under Rs. 200 in value of persons dying intestate in a Presidency town, when taken charge of by the police for safe custody, see Administrator-General's Act (II. of 1874).

As to probate and letters of administration in the case of Hindus, Mahomedans and Buddhists, and persons exempted under s. 332 see Probate and Administration Act (V. of 1881).

The 4th section shall not apply to any marriage contracted before the same day.

332. The "Local Government"* shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively to exempt† from the operation of the whole or any part of this Act, the members of any race, sect, or tribe "in the territories administered by the Local Government"§ or any part of such race, sect, or tribe, to whom the Local Government,* may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.

The "Local Government"* shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the "Local official Gazette"*

333.† (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.

SCHEDULE.

(Stamps and Fees.)

[Repealed by Act VII. of 1870.]

* The words within quotations have been substituted by Act 38 of 1920.

† The following classes have been exempted from the operation of the whole of the Act retrospectively from the passing of the Act viz:—

All native Christians in the Province of Coorg—see notification No. 204, dated 23rd July 1868 in *Gazette of India*, 1868 p. 1094.

the Jews of Aden—see Notification No. 1651, dated 20th November 1886. Bombay List of Local Rules and Orders, Ed. 1886, p. 2;

the members of the races known as Khasias and Syntengs (dwelling in the Chief Commissioner-ship of Assam)—see Notification No. 1671, dated 20th October 1887, Assam List of Local Rules and Orders, Ed. 1893 p. 6.

As to probate and letters of administration in the case of persons so exempted see the Probate and Administration Act (V. of 1881).

‡ S. 333 has been added by Act VI. of 1889 s. 10.

ACT XV. OF 1865.*

Parsi Marriage and Divorce Act.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH APRIL 1865.

An Act to define and amend the Law relating to Marriage and Divorce among the Parsis.

WHEREAS the Parsi community has represented the necessity of defining and amending the law relating to marriage and divorce among Parsis; And whereas it is expedient that such law should be made conformable to the customs of the said community; It is enacted as follows :—

I.—Preliminary.

- Short title. 1. This Act may be cited as "The Parsi Marriage and Divorce Act, 1865."
- Interpretation-clause. 2. In this Act, unless there be something repugnant in the subject or context,—†

* Act XV. of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts—

Sindh	...	See <i>Gazette of India</i> ... 1880, Pt. I, p. 672
West Jalpaiguri	...	Ditto ... 1881, Pt. I, p. 74
The Districts of Hazaribagh	...	
Lohardaga and Manbhum, and	...	
Pargana Dhalbhum, and the	...	
Kolhan in the District of Sing-	...	
bhum	...	Ditto ... 1881, Pt. I, p. 504
The scheduled portion of the	...	
Mirzapur District	...	Ditto ... 1879, Pt. I, p. 383
Jaunsar Bawar	...	Ditto ... 1879, Pt. I, p. 382
The District of Hazara, Peshawar,	...	
Kohat, Bannu, Dera Ismail Khan	...	
and Dera Ghazi Khan	...	Ditto ... 1886, Pt. I, p. 48
The District of Silhat	...	Ditto ... 1879, Pt. I, p. 631
The rest of Assam (except the North	...	
Lushai Hills)	...	Ditto ... 1897, Pt. I, p. 299

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumaon and Garhwal	...	See <i>Gazette of India</i> ... 1876, Pt. I, p. 606
The North-Western Provinces Tarai	...	Ditto ... 1876, Pt. I, p. 505
British Baluchistan	...	Ditto ... 1898, Pt. II, p. 327

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I, p. 301.

† Here certain words have been repealed by Act X of 1914.

"Priest" means a Parsi priest, and includes Dastur and Mobed :

"Marriage" means a marriage between Parsis, whether contracted before or after the commencement of this Act ; and "husband" and "wife" respectively mean a Parsi husband and a Parsi wife :

"Section" means a section of this Act :

"Chief Justice" includes Senior Judge :

"Court" means a Court constituted under this Act.

"British India" means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 and 22 Vict., cap. 106, entitled "An Act for the better Government of India ;"

And, in any part of British India, in which this Act operates, "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor-General of India in Council, and when such officer shall be authorized to exercise the powers vested by this Act in a Local Government; and

"High Court" means the highest Civil Court of appeal in such part.

II.—Of marriages between Parsis.

3. No marriage contracted after the commencement of this

Requisites to validity of
Parsi marriages,

Act shall be valid, if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Parsis, and set forth in a table which the Governor-General of India in Council shall, after due enquiry, publish in the *Gazette of India*,* and unless such marriage shall be solemnized according

* The following Table was published in the *Gazette of India*,
Sep. 9, 1865, pp. 981, 982:—

TABLE.

A man shall not marry his—

- | | |
|-------------------------------------|--|
| 1. Paternal grandfather's mother. | 13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother. |
| 2. Paternal grandmother's mother. | 14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister. |
| 3. Maternal grandfather's mother. | 15. Daughter or step-daughter, or any direct lineal descendant of either. |
| 4. Maternal grandmother's mother. | 16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son. |
| 5. Paternal grandmother. | |
| 6. Paternal grandfather's wife. | |
| 7. Maternal grandmother. | |
| 8. Maternal grandfather's wife. | |
| 9. Mother or step-mother. | |
| 10. Father's sister or step-sister. | |
| 11. Mother's sister or step-sister. | |
| 12. Sister or step-sister. | |

to the Parsi form or ceremony called "Asirvad" by a Parsi priest in the presence of two Parsi witnesses independently of such officiating priest; and unless, in the case of any Parsi who shall not have completed the age of twenty-one years, the consent of his or her father or guardian shall have been previously given to such marriage.

NOTES.

Certificates by priest—A certificate to be given by the officiating priest, under this section is not in itself one of the requisites for a valid marriage. 45B. 146.

Marriage during minority—Marriage is valid, even contracted during minority, when the marriage ceremony was performed with the formal or tacit consent of the guardians of the parties. 13B. 302.

Limitation—Limitation for suit for restitution of conjugal rights under the Act is enforceable only in the manner provided in S. 36 and such provision is in substitution of, and not in addition to the ordinary remedies provided by the Civil Procedure. 9B. H. C. R. 290.

4. No Parsi shall, after the commencement of this Act, contract any marriage in the life-time of his or her wife or husband, except after his or her lawful divorce from such wife or husband by sentence of a Court as hereinafter provided:
 Re-marriage save after divorce unlawful during life-time of first wife or husband.

and every marriage contracted contrary to the provisions of this section shall be void.

5. Every Parsi who shall, after the commencement of this Act, and during the life-time of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife.
 Punishment of bigamy.

6. Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act.
 Certificate and registry of marriages.

- | | |
|--|--|
| 17. Wife of son or of step-son, or of any direct lineal descendant of a son or step-son. | 23. Mother of wife's maternal grandfather. |
| 18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter. | 24. Mother of wife's maternal grandmother. |
| 19. Mother of daughter's husband. | 25. Wife's paternal grandmother. |
| 20. Mother of son's wife. | 26. Wife's maternal grandmother. |
| 21. Mother of wife's paternal grandfather. | 27. Wife's mother or step-mother. |
| 22. Mother of wife's paternal grandmother. | 28. Wife's father's sister. |
| | 29. Wife's mother's sister. |
| | 30. Father's brother's wife. |
| | 31. Mother's brother's wife. |
| | 32. Brother's son's wife. |
| | 33. Sister's son's wife. |

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the registrar of the place at which such marriage is solemnized.

The registrar, on receipt of the certificate and fee, shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

7. For the purpose of this Act a registrar shall be appointed.*

Within the local limits of the ordinary original civil jurisdiction of a High Court, the registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government.

Every registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

TABLE.

A woman shall not marry her—

- | | |
|---|--|
| 1. Paternal grandfather's father. | 18. Husband of son's daughter or of |
| 2. Paternal grandmother's father. | step-son's daughter, or of any direct |
| 3. Maternal grandfather's father. | descendant of a son or step-son, |
| 4. Maternal grandmother's father. | 19. Father of daughter's husband, |
| 5. Paternal grandfather. | 20. Father of son's wife. |
| 6. Paternal grandmother's husband, | 21. Father of husband's paternal |
| 7. Maternal grandfather. | grandfather. |
| 8. Maternal grandmother's husband | 22. Father of husband's paternal |
| 9. Father or step father, | grandmother. |
| 10. Father's brother or step-brother. | 22. Father of husband's maternal |
| 11. Mother's brother or step brother. | grandfather. |
| 12. Brother or step-brother. | 24. Father of husband's maternal |
| 13. Brother's son or step-brother's | grandmother. |
| son, or any direct lineal descendant | 25. Husband's paternal grandfather. |
| of a brother or step-brother. | 26. Husband's maternal grandfather. |
| 14. Sister's son or step sister's son, or | 27. Husband's father or step-father. |
| any direct lineal descendant of a | 28. Brother of husband's father. |
| sister or step sister. | 29. Brother of husband's mother. |
| 15. son or step-son, or any direct | 30. Husband's brother's son or his |
| lineal descendant of either | direct lineal descendant. |
| 16. Daughter's son or step-daughter's | 31. Husband's sister's son or his direct |
| son, or any direct lineal descendant | lineal descendant. |
| of a daughter or step daughter. | 32. Brother's daughter's husband. |
| 17. Husband of daughter, or of any | 33. Sister's daughter's husband. |
| direct lineal descendant of a daughter | |
| or step-daughter. | |

Note.—In the above table the words "Brother" and "sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriage.

* Certain words, which were repealed by Act XIV. of 1870, have here been omitted.

8. The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection ; and certified extracts therefrom shall, on application, be given by the registrar on payment to him by the applicant of two rupees for each such extract.

Every such register shall be evidence of the statements therein contained.

8A* Every Registrar, except the Registrar appointed by the Chief Justice of High Court of Judicature at Bombay, shall, at such intervals as the "Local Government by which he was appointed"† from time to time directs, send, to the Registrar-General of Births, Deaths, and Marriages for the territories administered by "such Local Government" a true copy, certified by him in such form as "such Local Government" from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to, and in violation of, section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

11. Every other person required by section 6 to subscribe or attest the said certificate, who shall, wilfully omit or neglect so to do, shall, on conviction thereof be, punished for every such offence with a fine not exceeding one hundred rupees.

12. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code, and shall be liable,

* S. 8A has been inserted by Act VI. of 1886, s. 31.

† The words within quotations have been substituted by Act 31 of 1920.

on conviction thereof, to the penalties provided in section 466 of the said Code.

13. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Penalty for not registering certificate-

14. Any person secreting, destroying or dishonestly or fraudulently altering, the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years, or, if he be a registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

Penalty for secreting, destroying, or altering, register,

III.—Of Parsi Matrimonial Courts.

15. For the purposes of hearing suits under this Act, a special Court shall be constituted in each of the presidency-towns of Calcutta, Madras, and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

Constitution of special Courts under Act.

16. The Court so constituted in each of the presidency-town shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras, or Bombay, as the case may be.

Parsi Chief Matrimonial Courts.

The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court or such other Judge of the same Court as the Chief Justice shall from time to time appoint shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates.

17. Every Court so constituted at a place other than a presidency-town shall be entitled the Parsi District Matrimonial Court of such place.

Parsi District Matrimonial Courts,

Subject to the provision contained in the next following section, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

NOTES.

Delegates—A delegate under this Act is in a similar position to a junior and cannot be challenged in appeal. 43 Ind. Cas. 71.

18. The Local Government may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government.

19. Any district, which the Local Government, on account of the fewness of the Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Local Government where there is such Court.

20. A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

21. The Local Governments shall, in the presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

The persons so appointed shall be Parsis: their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty.

22. The appointment of a delegate shall be for life.

But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code or other law for the time being in force, then and so often the Local Government may appoint any other person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the official Gazette.

23. All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code,

24. The delegates selected under sections 16 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21.

25. All advocates, vakils, and attorneys-at-law entitled to practise in a High Court shall be entitled to practise in any of the Courts constituted under this Act; and all vakils entitled to practise in a District Court shall be entitled to practise in any District Matrimonial Court constituted under this Act.

26. All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

When the defendant shall at such time have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

IV.—Of Matrimonial Suits.

(a) For a Decree of Nullity.

27. If a Parsi at the time of his or her marriage was a lunatic or of habitually unsound mind, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage, and still continues :

Provided that no suit shall be brought under this section if the plaintiff shall at the time of the marriage have known that the respondent was a lunatic or of habitually unsound mind.

28. In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

(b) For a Decree of Dissolution in Case of Absence.

29. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

(c.) *For Divorce or Judicial Separation.*

30. Any husband may sue that his marriage may be dissolved, and a divorce granted, on the ground that
 On ground of wife's adultery his wife has, since the celebration thereof, been guilty of adultery ;

and any wife may sue that her marriage may be dissolved, and a divorce granted, on the ground that, since
 On ground of husband's adultery, &c. the celebration thereof, her husband has been guilty of adultery with a married, or fornication with an unmarried woman, not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence :

In every such suit for divorce on the ground of adultery the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings,

NOTES.

Bigamy coupled with adultery—A second marriage contracted during the life time of his wife, but before the Act came into operation does not amount to "bigamy coupled with adultery" nor to adultery coupled with desertion within the meaning of this section—3 B. H. C. R. A. C. 113.

31. If a husband treat his wife with such cruelty or personal violence as to render it in the judgment of
 Grounds of judicial separation. the Court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into, or allowed to remain, in the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

32. In a suit for divorce or judicial separation under this
 Suits for divorce or judicial separation Act, if the Court be satisfied of the truth of the allegations contained in the plaint, and

that the offence therein set forth has not been condoned, and

that the husband and wife are not colluding together, and

that the plaintiff has not connived at, or been accessory to, the said offence, and

that there has been no unnecessary or improper delay in instituting the suit, and

that there is no other legal ground why relief should not be granted,

then, and in such case, but not otherwise, the Court shall decree a divorce or judicial separation accordingly.

NOTES

Adultery of petitioner—Adultery of petitioner is a legal ground under this section on which the court can refuse the petition for divorce.—10 Dom. L. R 1019.

Cost of wife—The common law of England applies to Parsis who inhabit the town and Island of Bombay. The wife is entitled to pledge her husband's credit and defend herself at his cost in an action against her irrespective of the fact whether she is successful or not.—13 Bom. L. R 920.

33. In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her, monthly or weekly during the suit, such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable.

Alimony pendente lite.

NOTES.

During the suit—includes the period up to the making of a final or absolute decree. 17B. 146.

34. The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum, or such monthly or periodical payments of money for a term not exceeding her life, as, having regard to her own property (if any,) her husband's ability, and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties, and suspend the pronouncing of its decree until such instrument shall have been duly executed.

Permanent alimony.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries during the time of such disobedience, for the price or value of such necessaries.

NOTES,

Court—The High Court in its original side has no jurisdiction in a suit between Parsi husband and a Parsi wife to make an order for permanent alimony unaccompanied by any order for judicial separation, which lies within the jurisdiction of the Parsi Chief Matrimonial Court at Bombay. 38B. 615=16 Bom. L. R 211.

As to what question should be referred to the jury Vide. 1894 P. J. 109,

35. In all cases in which the Court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

Payment of alimony to wife or her trustee.

NOTES.

Where the wife is granted permanent alimony and the husband's estate is charged with such alimony, she is entitled at the death of her husband, to receive permanent alimony out of the estate of the deceased and also to her distribution share out of the remaining estate of the deceased. 21B. 465.

(d.) *For Restitution of Conjugal Rights.*

36. Where a husband shall have deserted, or without lawful cause ceased to cohabit with, his wife, or where a wife shall have deserted, or without lawful cause ceased to cohabit with, her husband, the party so deserted, or with whom cohabitation shall have so ceased, may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

Suit for restitution of conjugal rights.

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

NOTES

Previous contract may be a bar, 23B. 279. How the decree is enforceable vide 9B, H. C. R. 290.

37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsis, or any contract connected with, or arising out of, any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

No suit to enforce marriage or contract arising out of marriage when husband under 16, or wife under 14, years.

38. In every suit preferred under this Act the case shall be tried with closed doors should such be the wish of either of the parties.

Suits with closed doors.

39. [*Stamps on complaints and petitions.*] *Repealed by Act VII. of 1870.*

40. The provisions of the Code of Civil Procedure* shall, so far as the same may be applicable, apply to suits instituted under this Act.
Civil Procedure Code- applied.

41. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge ;
Determination of ques- tions of law, procedure, and fact. but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

42. An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground :
Appeal to High Court.

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

43. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or
Liberty to parties to marry again.

when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner,

it shall be lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death.

V.—Of the Children of the Parties.

44. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the Court may from time to time pass such interim orders, and make such provision in the final decree, as it may deem just and proper, with respect to the custody, maintenance, and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,
Custody of children *pendente lite*.

* See Act V of 1908 s. 157.

and may, after the final decree, upon application by petition for this purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance, and education of such children as might have been made by such final decree, or by interim orders in case the suit for obtaining such decree were still pending.

45. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them.

VI.—Of the Mode of enforcing Penalties under this Act.

46. All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

47. If any offence, which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any presidency Magistrate* of the place at which such Court is held.

48. All fines imposed under the authority of this Act may, in case of nonpayment thereof, be levied by distress and sale of the offender's moveable property by warrant under the hand of the officer imposing the fine.

* See Act V. of 1898, s 3.

49. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return made to distress-warrant. can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

50. If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid or.

Imprisonment if no sufficient distress.

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

VII.—Miscellaneous.

51. Subject to the provisions contained or referred to in this Act, the High Court shall make such rules and regulations concerning the practice and procedure of the Parsi Chief and District Matrimonial Courts in the Presidency or Government in which such High Court shall be established as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same.

Rules of procedure of Parsi Matrimonial Courts to be made by High Court.

All such rules, revocations, and alterations shall be published in the official Gazette.

52. The Governor-General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Act in a Local Government.

Power to invest chief executive officer with powers of Local Government.

ACT XXI OF 1865.

The Parsi Intestate Succession Act. 1865.*

RECEIVED THE G.G.'S ASSENT ON THE 10TH APRIL 1865.

An Act to define and amend the Law relating to Intestate Succession among the Parsis.

WHEREAS it is expedient to define and amend the law relating to intestate succession among the Parsis ;
 Preamble. It is enacted as follows :—

NOTES.

Before the coming into operation of the Parsi Succession Act, 1865, the law governing Parsees in the mofussil was the ascertain usage of the community, modified by the rules of equity and good conscience. 30B. 359=7 Bom. L. R. 988.

1. Where a Parsi dies leaving a widow and children. the property of which he shall have died intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

* This title has been given by the Indian Short Titles Act (XIV of 1897).
 Act XXI of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 3.

It has been declared under the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts—

Sind	See <i>Gazette of India</i> ...	1880, Pt. I., p. 672
West Jalpaiguri	Ditto ...	1881, Pt. I., p. 74
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	Ditto ...	1881, Pt. I., p. 504.
Kumaon and Garhwal	Ditto ...	1876 Pt. I., p. 605.
The scheduled portion of the Mirzapur district	Ditto ...	1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto ...	1879, Pt. I., p. 382.
The Districts of Hazara Peshwar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto ...	1886, Pt. I., p. 48.
Ajmere and Merwara	Ditto ...	1878, Pt. I., p. 380.
The District of Silhat	Ditto ...	1879, Pt. I., p. 631.
The rest of Assam (except the North Lushai Hills	Ditto ...	1897, Pt. I., p. 299.

It has been extended, under the same Act to the Scheduled District of the North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 505.

It has been declared under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

- 2.** Where a female Parsi dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.

Division of property among widower and children.

NOTES.

Where a Parsi female died intestate and possessed of estate real and personal her whole estate on her death, rests in her husband and children in the shares defined by S. 2 of the Parsi Succession Act, 1865—5 Bom. L. R. 252,

- 3.** When a Parsi dies leaving children, but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

Division of property amongst children of male intestate leaving no widow.

- 4.** When a female Parsi dies leaving children, but no widower the property of which she shall have died intestate shall be divided amongst the children in equal shares.

Division amongst children of female intestate leaving no widower.

- 5.** If any child of a Parsi intestate shall have died in his or her life-time, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

Division of predeceased child's share among widow or widower and issue of such child.

NOTES.

Widower.—The word "widower" in this section signifies a widower relatively to the deceased wife only, and without consideration of the fact or possibility of the widower remarrying, 11 B. 1.

Widow and issue.—It is not a condition precedent to the application of S. 5 that the predeceased son of an intestate Parsi shall have left an widow and issue, 1 B. 506.

- 6.** Where a Parsi dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety.

Division of property when intestate leaves widow or widower but no lineal descendants.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

Where neither the father nor the mother of the intestate survive him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

The next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

7. When a Parsi dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

Division of property when intestate leaves neither widow nor widower nor lineal descendants.

The next-of kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

NOTES.

Distribution.—In distributing the estate among "brother" etc., sister and the lineal descendants of such of them as shall have predeceased the intestate the primary division must be per stirpes, 22 B. 909.

8. The following portions of the Indian Succession Act, 1865, shall not apply to Parsis, (that is to say), the whole of Part III, the whole of Part IV, excepting section 25, the whole of Part V; and section 43.

Exemption of Parsis from parts of Indian Succession Act, 1865.

NOTES.

This section should be so construed so as to preserve the English rule as to advancement contained in the statute of Distribution, in force for the Parsi community, 2 B. 75.

THE FIRST SCHEDULE.

(1.) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.

(2.) Grandfather and Grandmother.

(3.) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

(4.) Great-grandfather and great-grandmother.

(5.) Great-grandfather's son and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

THE SECOND SCHEDULE.

- (1.) Father and mother.
 - (2.) Brothers and sisters, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (3.) Paternal grandfather, and paternal grand mother.
 - (4.) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (5.) Paternal grandfather's father and mother.
 - (6.) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (7.) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (8.) Maternal grandfather and maternal grandmother.
 - (9.) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (10.) Son's widow, if she have not re-married at or before the death of the intestate.
 - (11.) Brother's widow, if she have not remarried at or before the death of the intestate.
 - (12.) Paternal grandfather's son's widow, if she have not remarried at or before the death of the intestate.
 - (13.) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.
 - (14.) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.
 - (15.) Maternal grandfather's father and mother.
 - (16.) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (17.) Paternal grandfather's father and mother.
 - (18.) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.
-

ACT XXI. OF 1866.*

RECEIVED THE G.-G.'S ASSENT ON THE 2ND APRIL 1866.

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; it is enacted as follows:—

Short title.

1. This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866."

2. [*Commencement of Act.*] *Repealed by Act XVI. of 1874.*

Interpretation-clause.

2. In this Act—

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan, nor a Jew:

* Act XXI. of 1866 has been declared to be in force in the whole of British India, except the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared in force in the Santhal Parganas by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, s. 3; and in the Arakan Hill District by Reg. IX. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1871,) to be in force in the following Scheduled Districts:—

Sindh	...	...	...	See <i>Gazette of India</i>	...	1880, Pt. I., p. 672.
West Jalpaiguri	...	...	...	Ditto	...	1881, Pt. I., p. 74.
The District of Darjiling	...	...	...	Ditto	...	1886, Pt. I., p. 500.
The Districts of Hazaribagh, Lohardanga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	...	...	Ditto	...	1881, Pt. I., p. 504.
The Porahat Estate in the Singhbhum District	...	...	...	Ditto	...	1897, Pt. I., p. 1050.
The scheduled portion of the Mirzapur District	...	...	...	Ditto	...	1879, Pt. I., p. 383.
Jaunseer Bawar	...	...	...	Ditto	...	1879, Pt. I., p. 382.
The District of Hazara, Peshwar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	...	...	Ditto	...	1886, Pt. I., p. 48.
The District of Silhat	...	...	...	Ditto	...	1879, Pt. I., p. 631.
The District of Lahaul	...	...	...	Ditto	...	1886, Pt. I., p. 301.
The rest of Assam (except the North Lushai Hills)	...	...	...	Ditto	...	1897, Pt. I., p. 299.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumaon and Garhwal	...	See <i>Gazette of India</i>	...	1876, Pt. I., p. 606.
The North-Western Provinces	...	...	...	...
Tarai	...	...	Ditto	...
	...	...	...	1876, Pt. I., p. 505.

“Native wife” shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan, nor a Jewess:

“Native law” shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans, and Jews:

“Month” and “years” shall respectively mean month and year according to the British calendar:

“High Court” shall mean the highest Civil Court of appeal in any place to which this Act extends.†

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

When convert deserted by his wife may sue for conjugal society.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

When convert deserted by her husband may sue

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of judicature, the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

Court in which suit shall be brought.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow.

Suit to be commenced by verified petition.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition* may be amended by permission of the Court.

† Here certain words, which were repealed by Act X. of 1914 have been omitted.

* Certain words regarding Court-fee, which were repealed by Act VII. of 1870, have been omitted. For Court-fee, see now Act VII. of 1870, Section 14., No. 14.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

On service of petition,
citation to respondent

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow.

Form of citation,

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure† as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

Service of citation.

11. If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code.‡

Penalty on respondent
not obeying citation.

12. On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved:—

Points to be proved on appearance of petitioner.

- (1.) The identity of the parties:
- (2.) The marriage between the petitioner and the respondent:
- (3.) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:
- (4.) The desertion or repudiation of the petitioner by the respondent:
- (5.) That such desertion or repudiation was in consequence of the petitioner's change of religion:
- (6.) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

First interrogation of respondent.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge; but when the respondent is exempt by law from personal appearance in Court, or when the judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by Commissioners acting under such commission as hereinafter mentioned.

14. Every interrogation mentioned in this Act and made by the Judge, may, at the discretion of the Judge, take place in open Court or in his private room.

Interrogations by Judge may be public or private.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

15. If the respondent be a female, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner, he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Procedure when female respondent refuses to cohabit with petitioner.

Adjournment for a year.

Interview.

16. At the expiration of such adjournment the petitioner shall again appear in Court, and shall prove that the said desertion or repudiation had continued up to the time last herein-before referred to; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent, on being interrogated by the Judge or Commissioners, as the case may be again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner, and the Judge shall, by a decree under his hand, and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Procedure on expiration of adjournment.

Interrogation of respondent.

Decree.

17. If the respondent be a male, and in answer to the interrogatories of the Judge or Commissioner's as the case may be shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioners, the Judge shall thereupon pass such a decree as last aforesaid.

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated; and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such remarriage shall be legitimate, any Native law to the contrary notwithstanding:

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

20. In suit instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commission issued under this section.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

22. The provisions of the Code of Civil procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit, and stating the ground of such dismissal.

24. If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall recommence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview, and adjournment which may then be requisite

under the provisions herein before contained, the Judge shall pass decree of the nature mentioned in the sixteenth section of this Act.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit, and stating the ground of such dismissal. A suit dismissed under this section shall not be revived.

26. If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.

28. If a suit be commenced under the provisions of this Act and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may, by the decree, order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act ; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion, or on the application of the respondent, state the case, and submit it with his own opinion thereon for the decision of the High Court.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns ; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded ;

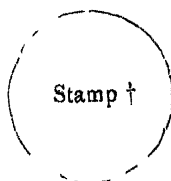
and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

34. Nothing contained in this Act shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies, and customs of the Roman Catholic Church.

35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statute 21 and 22 Vict., cap. 106, entitled, "An Act for the better Government of India."*

THE FIRST SCHEDULE.

FORM OF PETITION.



To the Judge of the Civil Court of
The day of 18 .
The petition of A. B. of

Sheweth:—

1. That your petitioner was born on or about the day of 18 .
2. That your petitioner was on the day of 18 law-fully married to C. D. at
3. That the said C. D. is now of the age of years or thereabouts.
4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 .
5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of
6. That on the day of 18 [at least six months prior to the date of the petition], the said C. D. deserted your petitioner, and has not since resumed cohabitation with him.
7. That such desertion was in consequence of your petitioner's said change of religion.
8. That there is no collusion nor connivance between your petitioner and the said C. D.

Your petitioner therefore prays that your Honour will order the said C. D. to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

A. B.

Form of verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

* The remainder of this section was repealed by the Repealing Act (XVI of 1874).

† Certain words, repealed by Act XII. of 1891, Sch. 1., have been omitted.

THE SECOND SCHEDULE.

FORM OF CITATION IN ORDINARY CASES.

To C D. of

Whereas *A. B.* of , claiming to have been lawfully married to you the said *C. D.* has filed his [*or her*] petition against you in the Civil Court of , alleging that you the said *C. D.* have deserted him [*or her*] for six months in consequence of his [*or her*] having changed his [*or her*] religion for Christianity, and praying that, unless you consent to live and cohabit with him [*or her*], it may be declared that his [*or her*] marriage is dissolved; Now this is to command you that, at the expiration of days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*

Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(signed)..... *G. H.*

THE THIRD SCHEDULE.

FORM OF CITATION IN CASE OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you the said *C. D.* has filed his [*or her*] petition against you in the Civil Court of alleging that you the said *C. D.* have deserted him [*or her*] for six months in consequence of his [*or her*] having changed his [*or her*] religion for Christianity, and praying that, unless you consent to cohabit with him [*or her*], it may be declared that his [*or her*] marriage is dissolved : Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorized in that behalf under a commission issued by this court. in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,

Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(Signed) *G. H.*

ACT XXIII OF 1866.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH MAY 1866.

An Act to correct two clerical errors in the Letters Patent for the High Court of Judicature for the Presidency of Bombay.

WHEREAS the twenty-second section of the Letters Patent for the High Court of Judicature for the Presidency of Bombay, dated the 28th December 1865, is as follows: "And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all *such* persons beyond such limits over whom the said High Court of Judicature at *Fort William in Bengal* shall have criminal jurisdiction at the date of the publication of these presents;" And whereas it is expedient to correct the two clerical errors in such section which are hereinbefore indicated by italics; It is hereby enacted as follows:—

Clause substituted for section 22 of revised Letters Patent of Bombay High Court.

1. In lieu of the said recited section, the following shall be substituted:—

"And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all persons beyond such limits over whom the said High Court of Judicature at Bombay shall have criminal jurisdiction at the date of the publication of these presents."

ACT XXV OF 1866,

· The Unclaimed Deposits Act 1866.*

RECEIVED THE G.-G.'S ASSENT ON THE 11TH JULY 1866.

An Act to transfer to the Government of India certain securities and moneys deposited in the High Courts of judicature at Fort William, Madras, and Bombay.

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras, and

* The portions of this act which referred to the Administrator-General of Bengal (which were repealed by Acts XXIV. of 1876, and XI. 1876), and those which referred to the Supreme Court of the Straits Settlement (which were repealed by Acts XVI of 1874 and XII of 1876), have been omitted,

Bombay in the course of suits in the said Courts,† and † appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of government :

NOTES.

Application by a judgment creditor for payment of money already realised in execution for him cannot be barred except under this Act—10 C. W. N. 354 (F. B.)

1. All securities and sums of money deposited in the said High Courts, or any of them, in the course of suits in any of the said Courts,† and † appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of government.

Moneys deposited in High Courts and unclaimed for twenty years transferred to Government.

2. [*Proceeds of estates administered under order of Supreme Courts of Straits Settlements or in charge of Administrator General of Bengal*] Repealed by Act XVI of 1874.

3. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money, or proceeds as aforesaid pending any suit already instituted or which shall here-after be instituted in respect thereof.

Transfer not made pending suits.

4. If any claim shall hereafter be made to any part of the securities, moneys, or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall in the case of securities and moneys transferred and paid under the first section of this Act, be established to the satisfaction of the High Court from which the transfer shall have been made, the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the claimant.‡

Repayment on subsequent establishment of claim.

† Here certain words, repealed by Act XII of 1891, Sch. I, have been omitted.

‡ As to the costs of petitions under this section, see Act V of 1870,

ACT XXVI OF 1866.

The oudh sub-settlement Act 1866.

RECEIVED THE G.-G.'S ASSENT ON THE 12th OCTOBER 1866.

An Act to legalize the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of subordinate proprietors in that Province.

WHEREAS rule have been made by the Chief Commissioner of Oudh for the better determination of certain claims by persons possessed of subordinate rights of property in the territories subject to his administration ; and where as it is expedient that such rules should have the force of law ; It is hereby enacted as follows :—

1. The rules for determining the conditions under which persons possessed of subordinate rights of property in talquas in the territories subject to the administration of the chief Commissioner of Oudh shall be entitled to obtain a sub-settlement of lands, villages, or sub-divisions there of, which they held under taluqdars on or before the thirteenth day of February 1856, and for determining the amounts payable to the taluqdar by such subordinate proprietors, which rules were made by the said Chief commissioner, sanctioned by the Governor-General of India in Council, and published in the *Gazette of India* for September 1st, 1866, and which are re-published in the schedule to this Act, are hereby declared to have the force of law.

2. [*Repeal of inconsistent enactments.*] Repealed by Act XIV. of 1870.

Short title.

3. This Act may be called "The Oudh Sub-settlement Act, 1866."

SCHEDULE

Rules regarding Sub-settlements and other subordinate Rights of Property in Oudh.

1. The extension of the term of limitation for the hearing of claims to under-proprietary rights in land makes of itself no alteration in the principles hitherto observed in the recognition of a right to sub-settlement.

2. When no rights are proved to have been exercised or enjoyed by an under-proprietor during the period of limitation, beyond the possession of certain lands as *sir* or *nankar*, no sub-settlement can be made ; but the claimant will be entitled, in accordance with the rules contained in the circular

orders which have hitherto been in force in Oudh upon this subject, to the recognition of a proprietary right in such lands. To entitle a claimant to obtain a sub-settlement, he must show that he possesses an under-proprietary right in the lands of which the sub-settlement is claimed, and that such right has been kept alive, over the whole area claimed, within the period of limitation. He must also show that he, either by himself or by some other person or persons from whom he has inherited, has by virtue of his under-proprietary right, and not merely through privilege granted on account of service, or by favour of the taluqdar, held such lands under contract (*pakka*) with some degree of continuousness since the village came into the taluqa.

3. The words "some degree of continuousness", will be interpreted as follows:—

If the village was included the taluqa before the thirteenth February 1836, the lease must have been held for not less than twelve years between that date and the annexation of the Province. If the village was included in the taluqa after the thirteenth February 1836, but before the thirteenth February 1844 the lease must have been held for not less than one year more than half the period between the time in which the village was so included and the annexation of the Province. Further, the lease must, in all cases, have been held for not less than seven years during the term of limitation, unless the village was included for the first time in the taluqa after the thirteenth February 1844, in which case the lease must have been held for not less than one year more than half of the period between the time in which the village was so included and the annexation of the Province: Provided that, if for any reason, the taluqdar was, for any period, dispossessed of the village, and the under-proprietor was dispossessed from the lease during the same period, the term of such dispossession shall not be reckoned against the under-proprietor: Provided also, that nothing in this rule will apply to any village which was included for the first time in the taluqa after the thirteenth February 1844, and in which the under-proprietor has held no lease for any period under the taluqdar.

4. If an under-proprietor, who is entitled to a sub-settlement, can show by documentary evidence that he had entered into an agreement with the taluqdar that he should hold, in perpetuity, the lease of the lands to the sub-settlement of which he is entitled, at a uniform (*istimrar*) rate of payment and that such agreement has been acted on within the period of limitation, he will not be liable to payment at an increased rate during the currency of the present or revised settlement. If, in consequence of any future re-adjustment of the Government demand, the former proportion between the respective shares of the profits derived from the land by the under-proprietor and the taluqdar should be altered, the amount payable by the under-proprietor to the taluqdar will be liable to re-adjustment, so that the proportion between their respective shares of the profits may remain unaltered.

5. If an under-proprietor, entitled to sub-settlement, can show by documentary evidence that he had entered into an agreement with the taluqdar that he should hold the lease of the lands to the sub-settlement of which he is entitled, on payment of the Government demand imposed before the annexation of the province on such lands, with the addition only of certain dues to the taluqdar, or other charges, and such agreement has been acted upon within the period of limitation, such under-proprietor will in future be liable only for the payment to the taluqdar of the Government demand for the time being, with the addition of ten per cent. in lieu of taluqdari dues and other charges.

6. If an under-proprietor, entitled to sub-settlement, has held the lease of the lands to the sub-settlement of which he is entitled under an agreement that he shall pay to the taluqdar a certain share or proportion of the profits or produce of such lands, and such agreement has been acted upon within the term of limitation, the under-proprietor will in future continue to be liable for the payment to the taluqdar of such share or proportion.

7. In all cases in which an under-proprietor is entitled to a sub-settlement other than those described in rules 4 to 6, the amount payable by the under-proprietor to the taluqdar will be determined according to the following principles :—

1st.—The payments made by the under-proprietor to the taluqdar before annexation will form the standard by which the present payments are to be regulated;

2nd.—In no case can the amount payable by the under-proprietor to the taluqdar, during the currency of the settlement, exceed the gross rental of the village less ten per cent in *sir* or *nankar* land;

3rd.—In no case the amount payable during the currency of the settlement, by the under-proprietor to the taluqdar, be less than the amount of the revised Government demand, with the addition of ten per cent. ;

4th.—If the gross rental of the village before annexation and at the present time be approximately the same, the under-proprietor will pay to the taluqdar the same amount which he paid before annexation;

5th.—If the present gross rental of the village exceed or fall short of the former gross rental, the payment of the under-proprietor to the taluqdar will be adjusted according to the following rule, namely, as the former gross rental is to the former payment of the under-proprietor, so is the present gross rental to the present payment of the under-proprietor;

6th.—In determining the amount payable by the under-proprietor to the taluqdar under the two last preceding rules, the former gross rental and the former payment of the under-proprietor will be held to be the average amount of the gross rental, and the average amount of the former payments of the under-proprietor for the twelve years preceding annexation, or for such portion of that time as the under-proprietor held a lease of the village from the taluqdar, or for such portion of that time as the necessary information may be obtained.

8. In any case in which the clear share of the profit to which the under-proprietor is entitled under the rules contained in the last preceding paragraph does not exceed twelve per cent. of the gross rental, no sub-settlement shall be made. In this case, the under-proprietor will retain all *sir* and *nankar* land to which his right is established. If the profits derived from such land be less than one-tenth of the whole rental of the land to the sub-settlement of which the right was established, the taluqdar shall increase the amount of such land so that the total profit to the under-proprietor shall not fall below one-tenth of the gross rental. The under-proprietor will possess, in the whole of such lands, a transferable and heritable right of property.

9. In any case in which an under-proprietor is entitled to a sub-settlement under the preceding rules, and in which the share of the gross rental which such under-proprietor is entitled to receive exceeds twelve per cent. but falls short of twenty-five per cent., such share will be increased so that it shall not be less than twenty-five per cent. of the gross rental. The cost of such increase will be borne half by the Government and half by the taluqdar. In this case, the cesses on account of roads, schools, &c., amounting to two and a half per cent. on the Government demand, will be payable by the taluqdar, while the village-expenses, including the allowances to the patwari and chaukidar, will be payable by the under-proprietor.

10. When a former proprietor, who is not entitled to a sub-settlement, has retained within the period of limitation, either by himself or by some other person or persons from whom he has inherited possession of land which by virtue of his proprietary right he held as *sir* or *nankar* when he was in proprietary possession, he will be deemed, in respect of such land, to be an

under-proprietor, and will possess a heritable and transferable right of property therein, subject to the payment of such amount as may be due by him to the superior proprietor.

11. If, in any case, the founder of a purwa or hamlet, who is unable to establish a right to sub-settlement, can show that, in consideration of having founded such purwa or hamlet, he has held therein, within the period of limitation, possession of *sir* or *nankar* land, he will be recognized as an under-proprietor in such land, subject to the payment of such amount as may be due by him to the taluqdar. The amount of such payment will be determined according to the rules for determining the amount of the payments due by other under-proprietors on their *sir* or *nankar* lands.

12. Claims to proprietary and under-proprietary rights in jagirs will be treated according to the same rules which are applicable to similar claims in taluqas

13. Cases in which claims to under-proprietary right have been disposed of otherwise than in accordance with these rules will be open to revision, but this rule will not apply to cases disposed of by arbitration or by agreement of the parties.

SIMLA :
The 20th August 1866. }

J. STRACHEY,
Chief Commissioner of Oudh.

ACT XXVII. OF 1866.*

The Indian Trustees Act, 1866.

RECEIVED THE G. G.'S ASSENT ON THE 24TH OCTOBER 1866.

An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees, in cases to which English law is applicable ; It is hereby enacted as follows :—

NOTES.

This Act applies to a trust in which the trustees and the cestuis que trustent are all Hindus, in so far as the trust is not inconsistent with Hindu Law—32 C. 143.

1. [Repealed by Act XIV. of 1870.]

* Act XXVII of 1866 applies only to the Lower Provinces, the North-Western Provinces, the Presidencies of Madras and Bombay, and the Panjab. It is mainly founded on 13 and 14 Vict., c 60, and 15 and 16 Vict., c 55.

It has been declared to be in force by the Scheduled Districts Act (XIV of 1874) in the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. See *Gazette of India*, 1881, Pt. I, p. 504.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

“Immoveable property” shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein :

“Stock” shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share* or interest therein. It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India : †

“Hold” and “Holding” shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity, or expectancy in any immoveable property :

“Contingent right,” as applied to immoveable property, shall mean a contingent or executory interest, or possibility coupled with an interest whether the object of the gift or limitation of such interest or possibility be or be not ascertained ; also a right of entry, whether immediate or future, and whether vested or contingent :

“Convey” and “Conveyance,” applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants-in-tail in accordance with the provisions of Act XXXI. of 1854 (*to simplify the modes of conveying land in cases to which the English law is applicable*) :

“Transfer” shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another :

* *Re Angelo*, 5 DeG. & S. 278.

† 18 & 19 Vict. c. 91, s. 10

"High Court" shall mean every Court now or hereafter established under the Statute 24 & 25 Vict. cap. 104, and also * *the Chief Court of Lower Burma* † or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge, ‡ as the case may be, to entertain applications and make orders under this Act :

"Tust" shall not mean the duties incident to an estate conveyed by way of mortgage : but, with this exception, the words "Trust" and "Trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person :

"Lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs :

"Person of unsound mind" shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

In the case of a will made or an intestacy occurring before the first day of January 1866, § "Heir" shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property : and "Devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent.

In the case of a will made or an intestacy occurring on or after the first day of January 1866 § "Heir" shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate ; and "Devisee" shall mean any person taking immoveable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession.

* Here certain words repealed by Act 18 of 1919 have been omitted.

† The words in italics have been inserted by Act VI of 1900.

‡ See Act No. IV. of 1866. s. 3.

§ The day on which Indian Succession Act (X. of 1865) came into force.

"Mortgage" shall be applicable to every estate or interest in immoveable or moveable property which would in the High Court be deemed merely a security for money.

"Person" shall include any company or association, or body of persons whether incorporated or not: *

3. The powers and authorities given by this Act to the High Court shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

NOTES

Extent—The High Court may exercise the summary powers conferred upon it by the Trustees Act (XXVII of 1866) in the case of Hindu Trust. This section which provides that the power and authority given by the Act to the High Court shall be exercised only in cases in which English law is applicable, cannot be intended to limit the operation of the Act only to cases to which, in their whole extent, the law prevailing in England applies without qualification or reserve, as this would virtually exclude the Act in any case in which an Act of the Indian Legislature has any bearing—5 B. 154.

4. When any lunatic or person of unsound mind shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that such property be vested in such person or persons in such manner and for such estate as the said Court shall direct: and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.†

5. When any lunatic or person of unsound mind shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right or disposing of the same to such person or persons as the said High Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.‡

* Here certain words repealed by Act X of 1919 have been omitted.

† Compare 13 & 14 Vict., c. 60, s. 3.

‡ Compare 13 & 14 Vict., c. 60, s. 4.

6. When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities, or to anything in action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest, in respect thereof.

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities, or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint,*

7. When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof in any person or persons the said Court may appoint †

8. Whenever any minor ‡ shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct ; and the order shall have the same effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate §

* Compare 13 & 14 Vict., c. 60, s. 5.

† Compare 13 & 14 Vict., c. 60, s. 6.

‡ See Act IX of 1865.

§ Compare 13 & 14 Vict., c. 60, s. 7.

9. When any minor shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

10. When any person solely holding any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate.*

11. When any person or persons shall hold any immoveable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in same manner for the same estate.†

12. When any person solely entitled to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.‡

* Compare 13 & 14 Viet., c. 60, s. 9.

† Compare 13 & 14 Viet., c. 60, s. 10.

‡ Compare 13 & 14 Viet., c. 60, s. 11.

13. When any person jointly entitled with any other person or persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons ; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.*

14. Where there shall have been two or more persons jointly holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct ; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in same manner for the same estate.†

15. Where any one or more person or persons shall have held any immoveable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct ; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.‡

16. When any person holding any immoveable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct ; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a

* Compare 13 & 14 Vict., c. 60, s. 12.

† Compare 13 & 14 Vict., c. 60, s. 13.

‡ Compare 13 & 14 Vict., c. 60, s. 14.

conveyance of the property in the same manner for the same estate.*

17. When any immoveable property is subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right, in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons of the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.†

18. In every case where any person holds or shall hold jointly or solely any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate as the Court will direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.‡

19. When any person to whom any immoveable property has been conveyed by way of mortgage, shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance or vesting of such property, then in any of the following cases it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, that is to say,—

* Compare 13 & 14 Vict., c. 60, s. 15.

† Compare 13 & 14 Vict., c. 60, s. 16.

‡ Compare 15 & 16 Vict., c. 55, s. 2.

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found :

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly-authorized agent of such last-mentioned person :

when it shall be uncertain which of several devisees of such mortgagee was the survivor :

when it shall be uncertain as to the survivor of several devisees of such mortgagee or as to the heir of such mortgagee, whether he be living or dead :

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died, and it shall not be known who is his heir or devisee :

and the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.*

20. In every case where the High Court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient to make an order appointing a person to convey such property, or release or dispose of such contingent right ;

and the conveyance, or release or disposition of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would in the particular case have had under the provisions of this Act.

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books

* Compare 18 & 14 Vict., c. 60, s. 19.

of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient to make an order directing the secretary or any officer of such company or society at once to transfer, or join in transferring, the stock to the person or persons to be named in the order:

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.*

NOTES.

As to appointment of persons to convey property on behalf of persons out of the jurisdiction and under disabilities—Vide. 7 C. 32.

21. When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint.

When trustees of stock or Government securities joined with trustees out of jurisdiction.

When any sole trustee of any stock, Government securities, or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.†

22. Where any sole trustee of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful

* Compare 13 & 14 Vict., c. 60, s. 20.

† Compare 13 & 14 Vict., c. 60, s. 22.

for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.*

23. Where any one of the trustees of any stock, Government securities, or thing in action, shall neglect or

When one of several trustees of stock, &c., refuses to transfer or receive and pay over dividends,

refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof or to sue for or recover

such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.†

24. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be

When stock, &c., standing in name of deceased person.

out of the jurisdiction of the High Court, or

cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest, or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.‡

25. Where any order shall have been made under this Act

Effect of order vesting legal right to transfer stock &c..

vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal

right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all

* Compare 13 & 14 Vict., c. 60, s. 23.

† Compare 13 & 14 Vict., c. 60, s. 24.

‡ Compare 13 & 14 Vict., c. 60, s. 25.

deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest, or income thereof, to the extent and in conformity with the terms of such order.

All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, association, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made.

Obligation to comply with requisitions of person invested. Indemnity.

After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any company, or association, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or Government securities, or the payment of the dividends, interest, or income thereof.*

Termination of powers of person replaced.

26. Where any order shall have been made under this Act by the High Court, vesting the legal right to sue for or recover any thing in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawfull for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.†

27. Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover anything in action, or any interest in respect thereof, for the space of twenty-eight days next after an On neglect to transfer stock, &c., for twenty-eight days, order made vesting right to transfer in such person as Court appoints.

* Compare 13 & 14 Vict., 60, s. 26.

† Compare 13 & 14 Vict., c. 60, s. 27.

order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court appoint.*

28. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest, or income thereof for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.†

29. When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities, in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly ;

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the extent and in conformity with the terms of the order.

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.‡

* Compare 15 & 16 Vict., c. 55, s. 4.

† Compare 15 & 16 Vict., c. 55, s. 5.

‡ Compare 15 & 16 Vict., c. 55, s. 6.

30. When any minor shall be solely entitled to any stock or Government securities upon any trust, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, income thereof.

Power to make order for transfer or receipt of dividends of stock, &c., in name of minor trustee.

When any minor shall be entitled jointly with any other person or persons to any stock or government securities upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Court may appoint.*

31. When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every persons holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

When decree made for sale of immoveable property for payment of debts.

and the High Court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.†

32. When any decree or order shall have been made by the High Court, whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

Holding immoveable property, the sale of which has been ordered by High Court.

In every such case, it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the Court

Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale.

* Compare 15 & 16 Vict., c. 55, s. 3.

† Compare 13 & 14 Vict., c. 60, s. 29.

S. 31 is repealed in places to which the Transfer of Property Act, 1882, extends or is extended.—

See Act IV. of 1882, s. 2.

shall think fit, either in any purchaser or in such other person as the Court shall direct.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.*

33. Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immoveable property, or for the partition or exchange of any immoveable property, or generally when any decree shall be made for the conveyance of any immoveable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property, or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his life-time a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights, and interests of trustees born or unborn.†

34. It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities, or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.‡

35. In all Cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the

Power to Court to make order appointing new trustees.

* Compare 15 & 16 Viet., c. 55, s. 1.

† Compare 13 & 14 Viet., c. 60, s. 30.

‡ Compare 13 & 14 Viet., c. 60, s. 31.

High Court, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and if there be such trustee or trustees, either in substitution for, or in addition to, him or them.*

The person or persons who, upon the making of such order, shall be trustee or trustees shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.†

NOTES

Note—The Courts in this country ought to refuse jurisdiction under this section on a mere application alleging misconduct or any other cause when the trustees whom it is sought to remove are willing to act and refer the applicant to suit—6 N. W. P. 54.

36. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order to direct that any immovable property subject to the trust shall vest in the person or persons who, upon the appointment, shall be the trustee or trustees, for such estate as the Court shall direct.

Power to Court to vest immovable property in new trustee.

Such order shall have the same effect as if the person or persons, who, before such order, was or were the trustee or trustees (if any), had duly executed all proper conveyances of such property for such estate.

37. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or government securities subject to the trust, or to receive the dividends, interest, or income thereof, or to sue for or recover any thing in action subject to the trust, or any interest in respect thereof, in the person or persons who, upon the appointment, shall be the trustee or trustees.‡

Power to Court to vest right to use in new trustees.

38. Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done.§

Old trustees not discharged from liability

* Compare 13 & 14 Vict., c. 60, s. 32.

† Compare 13 & 14 Vict., c. 60, s. 33.

‡ Compare 13 & 14 Vict., c. 60, s. 34.

§ Compare 13 & 14 Vict., c. 60, s. 36.

39. An order under any of the hereinbefore contained provisions, for the appointment of a new trustee Who may apply, or trustees or concerning any immoveable property, stock, or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities, or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the moneys secured by such mortgage.*

40. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.†

41. Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons. ‡

42. Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act. §

43. Whosoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the

* Compare 13 & 14 Vict., c. 60, s. 37.

† Compare 13 & 14 Vict., c. 60, s. 40.

‡ Compare 13 & 14 Vict., c. 60, s. 41.

§ Compare 13 & 14 Vict., c. 60, s. 42.

hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act *

44. Whenever any order shall be made under this Act by the High Court for the purpose of conveying any immoveable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee or an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir, or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died, and it is not known who is his heir or devisee, then in any of such cases the fact that the High Court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order :

Provided always that nothing herein contained shall prevent the High Court directing a re-conveyance of any immoveable property conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order ; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right, to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.†

45. It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities, or thing in action in the trustee or trustees of any charity or society, over which charity or society the High Court would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition of the said Court.‡

* Compare 13 & 14 Vict., c. 69, s. 43.

† Compare 13 & 14 Vict., c. 60, s. 44.

‡ Compare 13 & 14 Vict., c. 60, s. 45.

46. Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immoveable property, stock, Government securities, or thing in action conveyed or transferred under his Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such minor or person or unsound mind, subject to the order or disposition of the said Court ;

and shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said Court shall seem reasonable. †

47. Where, in any suit commenced or to be commenced in the High Court, it shall be made to appear to the Court that diligent search and enquiry have been made, after any person made a defendant, who is only a trustee, to serve him with the process of Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause :

Provided always that no such decree shall bind, affect, or in any wise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid. §

48. Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities, or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp-duty as it would

† Compare 13 & 14 Vict., c. 60, s. 47.

§ Compare 13 & 14 Vict., c. 60, s. 49.

have been chargeable with if it had been a deed executed, or a transfer made, by the person or persons holding such property or entitled to such stock, Government securities, or thing in action.

Every such order shall be duly stamped for denoting the payment of the said duty.*

49. The High Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper†

Costs may be paid out of estate.

50. Upon any petition being presented under this Act to the High Court concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs.

Power to order enquiry concerning person of unsound mind.

Such order shall have the same effect as the like order made under section 1 of Act XXXIV. of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*) and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act.

Effect of order.

The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded. ‡

Postponement of order pending enquiry.

51. Upon any petition under this Act being presented to the High Court it shall be lawful for the said Court to postpone making any order upon such petition, until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.§

Suit may be directed.

52. Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for act done pursuant thereto ; and it shall not

Indemnity to persons obeying orders under Act.

* Compare 15 & 16 Vict., c. 55, s. 13.

† Compare 13 & 14 Vict. c. 60 s. 51.

‡ Compare 13 & 14 Vict, c. 60 s. 52.

§ Compare 13 & 14 Vict. c. 60 s. 53.

be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.*

53. Any order made by the High Court under this Act shall have the same effect, and be executed in the same manner as a decree.
Execution and effect of orders,

Short title.

54. This act may be cited as "The Indian Trustee Act 1866."

* Compare 15 & 16 Vict c. 55 s. 7.

ACT XXVIII OF 1866 *

RECEIVED THE G.-G.'s ASSENT ON THE 24TH OCTOBER 1866.

An Act to give Trustees, Mortgagees, and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages, and Wills, and to amend the Law of property, and relieve Trustees.

Whereas it is expedient that, in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills, and other instruments, should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; it is enacted as follows:—

1. In the construction of this Act useless there be something repugnant in the subject or context:—

Interpretation-clause.

"Immoveable property" shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth:

* Act XXVIII. has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpaiguri the western Hills of Darjiling, the Darjiling Tarai, and the Damsan Sub-division of the Darjiling District	...	... See <i>Gazette of India</i> ... 1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	Ditto ... 1881, Pt. I., p. 504
The scheduled portion of the Mirzapur District	...	Ditto ... 1879, Pt. I., p. 383
Jaunsar Bawar	...	Ditto ... 1879, Pt. I., p. 382
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	...	Ditto ... 1886, Pt. I., p. 48
The District of Silhat	...	Ditto ... 1879, Pt. I., p. 631
The rest of Assam (except the North Lushai Hills)	...	Ditto ... 1879, Pt. I., p. 299

It has been extended, under the same Act, to the Scheduled Districts of Kumaon and Garhwal.—See *Gazette of India* 1876, Pt. I., p. 606.

It has been declared under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

This Act is founded on 22 & 23 Vict., c. 35, and 28 & 24 Vict., c. 145.

"Mortgage" shall be taken to include every instrument by virtue whereof immoveable property is in any manner conveyed, pledged, or charged as security for the repayment of money or money's worth lent, and to be re-conveyed or realeased on satisfaction of the debt:

"Mortgagor" shall be taken to include every person by whom any such conveyance, pledge, or charge as aforesaid shall be made:

"Mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge, or charge as aforesaid is made or transferred : and

"High Court" means any Court established or to be established under Statute 24 & 25 Vict., cap. 104, and includes* *the Chief Court of Lower Burma.*†

Powers of trustees for sale, &c., and trustees of renewable Leaseholds.

2. In all cases where, by any will, deed, or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to the uses or trusts of, such will, deed, or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times.‡

3. It shall be lawful for the persons making any such sale to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit ; and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to resell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby,

* Certain words repealed by Act 18 of 1919 have been omitted.

† The words in italics have been inserted by the Lower Burma Courts Act (VI of 1900), Sch. 1.

‡ Compare 23 & 24 Vict., c. 145 s. 1.

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase money in the purchase of any other property or otherwise.*

4. For the purpose of completing any such sale as aforesaid, Trustees exercising power of sale, &c., empowered to convey shall have full power to convey or otherwise dispose of the property in question in such manner as may be necessary.†

5. The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed, or instrument containing the power of sale ; Money arising from sales to be laid out in manner indicated in will, &c.

and, until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid : Until so laid out, money to be invested in Government securities.

Provided that, if the will, deed, or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid, would have been payable or applicable in case such sale had not been made.‡

Powers of Mortgagees.

6. Where any principal-money is secured or charged by deed on any immoveable property, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators, and assigns, shall, at any time after the expiration of one year from the time when such principal-money shall have become payable, according to the terms of the deed, or after any interest on such principal-money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the Powers incident to mortgagee.

*Compare 23 & 24 Vict., c. 145, s. 2.

† Compare 23 & 24 Vict., c. 145, s. 3.

‡ Compare 23 & 24 Vict., c. 145, s. 4.

§ As to the application of ss. 6 to 19 to certain English mortgages, see Transfer of Property Act (IV. of 1882), s. 69, as amended by Act (III. of 1885) s. 5.

charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:—

1st, a power to sell, or concur with any other person in selling, the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make and to rescind or vary contracts for sale, or buy in and re-sell the property, from time to time, in like manner:

2nd, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.*

7. Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.†

8. No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge or affixed on some conspicuous part of such property;

but, when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damaged by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.‡

9. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:—

first, in payment of all the expenses incident to the sale or incurred in any attempted sale;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and

thirdly, in discharge of all the principal-moneys then due in respect of such charge;

* Compare 23 & 24 Vict., c. 145, s. 11.

† Compare 23 & 24 Vict., c. 145, s. 12.

‡ Compare 23 & 24 Vict., c. 145, s. 13.

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his exccutors, administrators, or assigns, as the case may be.*

10. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign Conveyance to purchaser. to and vest in the purchaser the property sold, for all the estate and interest therein which the person who created the charge had power to dispose of :

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee simple of the property comprised therein in cases where the mortgagor could have disposed of such fee simple at the date of the mortgage.†

11. At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed, or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of ;

and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.‡

12. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.§

* Compare 23 & 24 Vict., c. 145, s. 14.

† Compare 23 & 24 Vict., c. 145, s. 15.

‡ Compare 23 & 24 Vict., c. 145, s. 16.

§ Compare 23 & 24 Vict., c. 145, s. 17.

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court. .

13. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.*

14. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver, by suit, distress, or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of,†

15 Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.‡

16. Every receiver appointed aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding five *per centum* on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five *per centum* on such gross amount.§

17. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire out of the money received by him the whole or any part of the property included in the charge which is in its nature insurable||

18. Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue, and of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on

* Compare 23 & 24 Vict., c. 145, s. 18.

† Compare 23 & 24 Vict., c. 145, s. 19.

‡ Compare 23 & 24 Vict., c. 145, s. 20.

§ Compare 23 & 24 Vict., c. 145, s. 21.

|| Compare 23 & 24 Vict., c. 145, s. 22.

the insurances, if any; and in the next place in payment of all the interest accruing due in respect of any principal-money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.*

19. The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to charges by way of mortgage or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt†

Leases.

20. Where any license to do any act which, without such Restriction on effect of license, would create a forfeiture, or give a license to alien. right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall, at any time after this Act comes into operation, be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.‡

21. Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license; or shall be given to any lessee or

* Compare 23 & 24 Vict., c. 145, s. 23.

† Compare 23 & 24 Vict., c. 145, s. 24.

‡ Compare 23 & 24 Vict., c. 35, s. 1.

owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject for such license.*

22. Where the reversion upon a lease is reserved, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.†

Rent-charges.

23. The release from a rent-charge of part of the immoveable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice, nevertheless, to the rights of all persons interested in the property remaining unreleased and not concurring in or confirming the release.‡

Powers.

24. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity:

* Compare 23 & 24 Vict., c. 35, s. 2.

† Compare 22 & 23 Vict., c. 35, s. 3.

‡ Compare 22 & 23 Vict., c. 35, s. 10.

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument :

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.*

25. Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his immovable property, or any specific portion thereof, with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other ;

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.†

26. The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.‡

27. If any testator who shall have created such a charge as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that is whole estate and interest therein shall become ves-

Executors to have power of raising money, &c., where no sufficient bequest.

* Compare 22 & 23 Vict., c. 35, s. 12.

† Compare 22 & 23 Vict., c. 35, s. 14.

‡ Compare 22 & 23 Vict., c. 35, s. 15.

ted in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on, and become vested in, the person or persons (if any) in whom the executorship shall for the time being be vested.*

28. Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections Purchasers, &c., not bound to enquire as to powers. 25, 26, and 27 of this Act, or any of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.†

Inheritance.

29. In cases of intestacies occurring before the first day of January 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.‡

This section shall be read as part of Act No. XXX. of 1839§
(for the amendment of the law of inheritance).||

Assignment of Moveables and Terms for years.

30. Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.¶

Purchasers.

31. The *bona-fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the Not bound to see to application of purchase-money, &c.

* Compare 22 & 23 Vict., 35, s. 16.

† Compare 22 & 23 Vict., c. 35, s. 17.

‡ Compare 22 & 23 Vict., c. 35, s. 19.

§ Repealed, except as to descents before 1866, by Act No. VIII. of 1868.

|| Compare 22 & 23 Vict., c. 35, s. 20.

¶ Compare 22 & 23 Vict., c. 35, s. 21.

person paying the same from seeing to the application, or being answerable for the misapplication thereof.*

Investment of Trust funds.

32. Trustees having trust-money in their hands, which it is their duty to invest at interest, shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature :

Provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.†

Trustees and Executors.

33.‡ In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any, of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education or not.

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time, in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen:

* Compare 22 & 23 Vict., c. 35, s. 23, omitting the limiting clause, "unless the contrary shall be expressly declared by the instrument creating the trust or security."

† Compare 23 & 24 Vict., c. 145, s. 25.

‡ Sections 33 to 37 are repealed in places to which places the Indian Trusts Act (II. of 1882) extends or is extended. See the Indian Trusts Act (II. of 1882), s. 2.

Provided always that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.*

34. Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons, nominated for that purpose by the deed, will, or other instrument creating the trust (if any), or if there be no such person or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator, of the last surviving and continuing trustee, or for the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any), which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors, or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance of transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will, or other instrument (if any) creating trust.†

*Compare 23 & 24 Vict. c. 145, s. 26 † Compare 23 & 24 Vict. c. 145, s. 27.

The Official Trustee may with his consent, and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

Appointment of official Trustee to be a trustee.

NOTES.

The Trustees and mortgagees Powers Act—XXVIII of 1866 does not apply to charitable trusts. S. 34. of the Act is repealed wholly ; there is no saving or exception in favour of charitable trusts or of trustees of properties dedicate to charity 33.B. 509 ;

35. The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the life-time of the testator.*

Appointment in place of trustee predeceasing testator.

36. The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or power reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.†

Trustees' receipts to be discharges.

37. Every deed, will, or other instrument creating a trust, either expressly or by implication, shall without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say.

Every trust-instrument deemed to contain clauses for indemnity and reimbursement of trustees.

“that the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively ; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse

* Compare 23 & 24 Vict., c. 145, s. 28.

† Compare 23 & 24 Vict., c. 145, s. 29.

themselves or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trust or powers of the said deed, will, or other instrument." *

38. It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.†

39. [*Trustee. &c., making payment under power-of-attorney, not liable by reason of death of party giving power.*] *Repealed by the Powers-of-attorney Act (VII. of 1882), s. 6.*

40. Where an executor or administrator liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

* Compare 22 & 23 Vict., c. 35, s. 31.

† Compare 23 & 24 Vict., c. 145, s. 30.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.*

41. In like manner, where an executor or administrator is liable as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant, or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.†

42. Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration suit, for creditors and others to send into the executor or administrator their claims against the

* Compare 22 & 23 Vict., c. 35, s. 27.

† Compare 22 & 23 Vict., c. 35, s. 28.

estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.*

43. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice, or direction of such judge on any question respecting the management or administration of the trust-property or the assets of any testator or intestate.

Trustee, executor, &c., may apply by petition to Judge of High Court, for opinion, advice, &c., in management, &c., of trust property.

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

• The trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator, in the subject-matter of the said application :

Provided, nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator, in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction ; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.†

NOTES

What question can be considered under this Act—Vide 7B-381. see also 12 B. 638 ; 12 Bom. L. R. 1040.

* Compare 22 & 23 Vict., c. 35, s. 29.

† Compare 22 & 23 Vict., c. 35, s. 30.

General Provisions.

44. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of immovable or moveable property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent, but the estates or interest of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.*

45. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after this Act comes into operation, or under a will or codicil confirmed or revived by a codicil executed after that date,† and only to property in British India and to cases to which English law is applicable.

46. This Act may be called "The Trustees' and Mortgagees' Powers Act, 1866."

* Compare 23 & 24 Vict., c. 145, s. 31.

† Compare 23 & 24 Vict., c. 145 s. 34.

ACT I. OF 1867.**Ganges Tolls.**

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JANUARY 1867.

An Act to authorize the levy of tolls for the improvement of the navigation of the Ganges.

WHEREAS it is expedient to authorize the levy of tolls on certain steamers, flats, and boats plying on the river Ganges, to be applied for the improvement of the navigation of the said river between Allahabad and Dinapore; It is hereby enacted as follows:—

Interpretation-clause.

1. In construing this Act—

“Lieutenant-Governor” shall mean the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William;

“Master” shall include every person (except a pilot) having command or charge of any steamer, flat, or boat; and

“Magistrate” shall include any person exercising any of the powers of a Magistrate.

2. A toll not exceeding twelve annas per hundred maunds shall be payable, at such place or at one of such places subject to the government of the Lieutenant-Governor as he shall from time to time direct, in respect of every steamer, flat, and boat of the burden of two hundred maunds and upwards, which shall pass up or down the Ganges by such place or any one of such places:

Toll not exceeding 12 annas per 100 maunds chargeable on vessels ascending or descending Ganges.

Provided that toll shall be levied in the case of steamers only on sixty-five per cent. of the burden, and in the case of flats only on ninety per cent. of the burden.

3. The burden of steamers and flats liable to pay tolls under this Act shall be determined according to the method which may from time to time be practised by the Master Attendant at Calcutta in order to ascertain the amount of port-dues which such steamers and flats would be liable to pay on arriving within the limits of the port of Calcutta.

Rules for measurement of burden.

The following method shall be used for determining in maunds, according to actual floatage or displacement, the burden of boats liable to pay tolls under this Act: (that is to say), half the length in feet at the water-level of the boat shall be multiplied by the greatest width in feet at the water-level, and the product shall further be multiplied by the draft of water in feet, and the number so found shall be taken to be the burden in maunds.

Thereupon the toll shall be calculated according to the even hundreds of maunds, fractions of a hundred being neglected.

4. The funds raised by the tolls payable under this Act shall be applicable, at the discretion of the Lieutenant Governor, to defray the expenses of improving and facilitating the navigation of the Ganges between Allahabad and Dinapore.

Application of funds raised under Act.

5. The Lieutenant-Governor may appoint any person he may think fit to collect the tolls payable under this Act at any place or places under his government, and may from time to time remove any such person and appoint another person in his stead.

Appointment of Collector of tolls.

6. Sections 2 and 3 of this Act, and a list of the rates of toll and of the place or places of collecting the toll leviable under this Act, shall be at all times exhibited at such place or places in the English and Urdu languages, and shall also be published thrice in the local Gazette.

List of tolls.

7. Every person so appointed shall collect the tolls leviable under this Act by himself, or by any officer in his establishment (if any) whom he shall appoint in this behalf.

Person to collect tolls, and receiver to give voucher for same.

The officer to whom any such toll shall be paid shall grant to the person paying the same a voucher in writing under his hand, describing the name of his office and the place at which such payment shall be made, the name (if any), burden, and other proper description of the steamer, flat, or boat, and the voyage in respect of which such toll shall be paid.

8. If any toll leviable under this Act in respect of any steamer, flat, or boat shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such steamer, flat, or boat, and any furniture thereof, and to detain the same; and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector or Deputy Collector of the district in which the seizure has been made, or other public officer duly authorized by the Lieutenant Governor in this behalf.

Seizure of tolls law enforced.

On receipt of such report, the Collector, Deputy Collector, or other officer as aforesaid, shall publish a notice appointing a day for the sale of the said steamer, flat, or boat, and any furniture thereof.

The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale.

If the toll and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector, Deputy Collector, or other officer as aforesaid, such officer shall sell the steamer, flat, or boat, and furniture seized, or so much thereof as may be necessary to pay the toll, and also any expenses occasioned by non-payment.

So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll and for defraying the expenses occasioned by non-payment, shall be returned to the master of the steamer, flat, or boat.

9. Notwithstanding anything in this Act contained, the person Power to sue for recovery of tolls. authorized to collect the tolls payable under this Act at any such place as last aforesaid, may, in his own name, sue for and recover, on behalf of the Government of India, the amount of any tolls payable to him under this Act, by suit in any of the Civil Courts against the owner or master of any steamer, flat, or boat liable thereto.

10. Upon the refusal or neglect of any owner or master of any Ascertainment by toll-collector of burden of steamer, flat, or boat. steamer, flat, or boat liable to pay toll under this Act, to satisfy the person authorized to collect such toll as to what is the true burden, as ascertained under section 3 of this Act, of the steamer, flat, or boat, it shall be lawful for such person to cause such steamer, flat, or boat to be measured at the expense of the master thereof, and such expense shall be recoverable in the the same manner as tolls payable under this Act;

or it shall be lawful for such person to deliver to the master or owner of such steamer, flat, or boat, or to leave for him on board such steamer, flat, or boat, a notice in writing. specifying what, in his judgment, is the burden of the steamer, flat, or boat, and the burden specified in such notice shall be deemed to be the real burden of the steamer, flat, or boat, and be treated as such for all the purposes of this Act, until the owner or master of the steamer, flat, or boat shall give sufficient proof of the true burden thereof, as ascertained under section 3 of this Act.

11. The master of any steamer, flat, or boat which shall depart Evading payment of tolls. from, or arrive at, any place as last aforesaid, upon, or in the course of, or at the termination of, any voyage, shall, upon demand by any person authorized to collect or receive the tolls under this Act, specify whence he is come and whither he is bound.

If any master of any such steamer, flat, or boat, shall refuse, or neglect so to do, or shall make a false statement as to the place from which he is come or to which he is bound, or shall endeavour to evade the payment of any toll payable under this Act, he shall be punishable by a Magistrate to a fine not exceeding two hundred rupees.

12. If any dispute shall arise respecting the liability of any Magistrate to decide disputes respecting tolls, steamer, flat, or boat to the payment of toll under this Act, or in respect of the burden of any steamer, flat, or boat, or the amount of toll payable, or the amount of any charges on account of any sale under this Act, such dispute shall be heard and determined by a Magistrate, and the decision of such Magistrate shall be final.

13. The Lieutenant-Governor may, from time to time, as he Lieutenant-Governor may think fit, reduce all or any of the tolls alter tolls, payable under this Act, in respect of all vessels or of any particular class or classes of vessels, and again raise such tolls to any amount not exceeding the amount hereinbefore specified.

He may also prescribe a mode or modes of measurement for burden differing from those prescribed in section 3 of this Act; provided that the tolls payable under such new mode or modes of measurement shall not exceed the amount specified as aforesaid.

14. Whenever, in the opinion of such officer as the Lieutenant-Governor shall appoint in this behalf, the Power to prohibit construction of bandhels. construction of any bandhels or other contrivance for fishing or for any other purpose, in any part of the Ganges between Allahabad and Dinapore, is likely to cause obstruction to the free and safe navigation of such part, he may, by notice in writing, to be served on the owner or person in charge of such bandhel or other contrivance, or, if such owner or other person cannot be found, to be affixed at some conspicuous place in the nearest village, prohibit the construction of such bandhel or other contrivance.

15. Any person who shall wilfully disobey any prohibition under the last preceding section, or shall Penalty for causing obstruction to navigation. wilfully cause or aid in causing any obstruction to the navigation of the Ganges between Allahabad and Dinapore, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished, on conviction before a Magistrate, with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction or in repairing such damage.

16. It shall be lawful for the Lieutenant-Governor from time to time to make rules not repugnant to any law in force, and to repeal, alter, and amend such rules, for the management of the navigation of any part of the Ganges between Allahabad and Dinapore, and for regulating the conduct of persons employed for any of the purposes of this Act; and the Lieutenant-Governor may affix fines as penalties for the infringement of such rules, not exceeding fifty rupees for any one infringement, of five rupees a day for any continuing infringement.

Such rules may contain directions for any of the following amongst other matters:—

(a) for fixing the number and the width of steamers, flats, and boats to be allowed to pass into or out of or through any part of the Ganges between Allahabad and Dinapore at one time or abreast;

(b) for determining the length of time during which steamers, flats, or boats may remain stationary on such part, and the amount of demurrage to be paid by steamers, flats, or boats remaining stationary beyond such time;

(c) for regulating the mode in which, and the place or places at which, tolls are to be levied under this Act;

(d) for the removal of sunken vessels and obstructions;

(e) and for the storing and disposal of the cargo of steamers, flats, and boats seized under this Act.*

17. All fines imposed under this Act may be recovered in the manner prescribed by the Code of Criminal Procedure, 1882,† and may be disposed of as the Lieutenant-Governor shall from time to time direct.

*See *North-Western Provinces Gazette*, 15th September 1869, pp. 363, 364.

†The reference to the Code of Criminal Procedure (Act XXV. of 1861) is altered in accordance with the new Code of Criminal Procedure (Act V. of 1898).

ACT III. OF 1867.***The Public Gaming Act, 1867.**

RECEIVED THE G.-G.'S ASSENT ON THE 25 TH JANUARY 1867.

An Act to provide for the punishment of public gambling and the keeping of common gaming houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, the Central Provinces, and Lower Burma,

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories † respectively subject to the governments of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William “and” ‡ of the Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh, of the Chief Commissioner of the Central Provinces, and of the Chief Commissioner of Lower Burma; † It is hereby enacted as follows:—

Interpretation-clause

1. In this Act—

“Lieutenant-Governor” means the Lieutenant-Governor of the said North-Western Provinces, or the Punjab, as the case may be :

“Chief Commissioner” means the Chief Commissioner of Oudh, the Central Provinces, or Lower Burma, † as the case may be :

[“Gaming” includes wagering or betting, except wagering or betting upon a horse-race, when such wagering or betting takes place.

(a) on the day on which such race is run, and

(b) in an enclosure which the stewards controlling such race have with the sanction of the Local Government, set apart for the purpose, but does not include a lottery ;

*. Act III. of 1867 has been declared in force in certain Railway lands by Act XIV. of 1874 and in British Baluchistan by Reg. 1 of 1890.

The short title has been given by the Repealing and Amending Act (V. of 1897).

† The territories are now known as Lower Burma.—See Burma Laws Act (XIII. of 1898), s. 7.

The Chief Commissioner is styled Lieutenant-Governor of Burma.—See Proclamation, dated the 9th April 1897, *Gazette of India*, pt. 1., p. 261.

‡ The word “and” has been inserted by Act XII. of 1891.

'Instrument of gaming' includes any article used as a means or appurtenances of, or for the purpose of carrying on or facilitating, gaming ;

"Common gaming house" means any house, room, hut, vessel, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instrument or otherwise howsoever.*

"Common gaming-house" means any house, walled enclosure, room, or place in which cards, dice, tables, "Common gaming house." or other instruments of gaming, are kept or used for the profit or gain of the person owning, occupying, using, or keeping such house, enclosure, room, or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room, or place, or otherwise howsoever.†

NOTES.

Gambling is not punishable unless it is carried on in public places, 3 N. W. P. 134 ; 14 P. R. 1896 Cr.

Profit or gain.—When the occupier of a house derives his profit from the game it is common gaming-house, 27 A 567.

Lottery tickets are instruments of gaming—12 W. R. Cr. 34.

2. Sections 13 and 17† of this Act shall extend to the whole of the said territories ; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by a notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway-station-house, and place being not more than three miles distant from any part of such station-house within the territories subject to his Government or Administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb, or or station-house, and from time to time to alter the limits so defined.

* The words within brackets have been substituted by U. P. Act I of 1917 for the original definition of 'common gaming house.'

† Certain words after this repealed by Act 17 of 1917 have been omitted.

‡ The words and figures, "sections 13 and 17," have been substituted for the words and figures, "sections 13, 17, and 18," as s 18 has already been repealed, —See Act XII. of 1891.

[Sections 13 and 17 of this Act shall extend to the whole of the said territories ; and it shall be competent to the Lieutenant-Governor, whenever he may think fit, to extend by notification to be published in the official Gazette, all or any of the remaining sections of this Act to any area within the United Provinces.] *

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

NOTES.

Vide 12 P. R. 1886 cr. ; 23 P. R. 1887 cr. ; 3 P. R. 1885 cr. ; 12 Cr. L. J. 107.

3. Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room, or place situate within the limits to which this Act applies, opens, keeps, or uses the same as a common gaming-house ; and

whoever, being the owner or occupier of any such house, walled enclosure, room, or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used, or kept by any other person as a common gaming-house ; and

whoever has the care or management of or in any manner assists in conducting, the business of any house, walled enclosure, room, or place as aforesaid, opened, occupied, used, or kept for the purpose aforesaid ; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding three months.

NOTES.

Alterations in United Provinces.

In the United Provinces read "house, room, tent, walled enclosure, space, vehicle, vessel, or place" for the words "walled enclosure, room, or place" in sections 3, 4, 5, 6 and 10, vide s. 3 of U P Act 1 of 1917.

Profit—To support a conviction the owner must derive profit. 19 P R 1871 cr; 16 A. L. J 760.

* The words within brackets have been substituted by U P Act V of 1919 for paragraph (1) of section 2.

In order to support a conviction there must be evidence that instruments of gaming were kept or used—L. B. R. (1872—1892), 532.

Separate convictions for keeping a common gaming house and gambling in it himself is illegal. L. B. R. (1893—1900) 459.

4. Whoever is found in any such house, walled enclosure, room, or place playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month ;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

NOTES.

Alterations in U. P.—As regards alterations in U. P. vide notes under section 3.

Conditions of convictions—(1) The house must be a common gaming-house, (2) that cards dice and other instruments of gaming were kept or used for the profit or gain of the person owning, occupying, using or keeping the house (S. C. 203 Oudh ; 46 P. R. 1867 Cr. ; 6 C. L. R. 17 ; 2 N. W. P. 289.

Misjoinder of charges—Persons separately charged under ss. 3 and 4 cannot be tried together, 5 P. W. R. 1910 Cr.=5 Ind. Cas. 720. But see 14 Cr. L. J. 293.

Sentence of fine and imprisonment—cannot both be imposed upon an accused convicted under ss. 3 and 4—L. B. R. (1872—1892) 434. For first offence under s. 4 fine is more appropriate form of punishment L. B. R. (1872—1892) 428. Presumption as regards whether any house is a gambling house or not—vide 35 A. 1 ; 29 P. R. 1881.

Found—A person seen actually in a gaming house is found in the house. 22 P. R. 1895 Cr. when not found conviction is illegal, Cr. Dig. 63 of 1876 ; 35 P. R. 1894 Cr.

Limit of sentence—is rigorous imprisonment for two months or fine of Rs. 200. A. W. N. 1881, 129 ; A man cannot be sentenced to more than one week's imprisonment in default of fine (L. B. R. 1893—1900) 385.

5. If the Magistrate of a district,* or other officer invested with the full powers of a Magistrate,† or the District Superintendent of Police, upon credible information, and after such inquiry

* For power of Local Government to authorize Magistrates of the second class to exercise the powers conferred by s. 5 on the Magistrate of the district, see Act XVI of 1884, s. 5.

† Now the District Magistrate or a Magistrate of the first class—See Act V of 1898, s. 3. The Code was extended to British Baluchistan under ss. 5 and 5 (a) of the Scheduled Districts Act (XIV of 1874).—See *Gazette of India*, 1898, Pt. II, p. 721.

as he may think necessary, has reason to believe that any house, walled enclosure, room, or place, is used as a common gaming-house,

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room, or place ;

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming ;

and may seize, or authorize such officer to seize, all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used ; or intended to be used, for the purpose of gaming, which are found therein ;

and may search, or authorize such officer to search, all parts of the house, walled enclosure, room, or place, which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody ;

and may seize, or authorize such officer to seize, and take possession of, all instruments of gaming found upon such search.*

NOTES.

A magistrate has no jurisdiction to leave execution of warrant to discretion of police, L. B. R. (1872—1892) 86.

Credible information what is—vide 7 P. R. 1882, Cr. (F. B.) But police report is not 9 P. R. 1876 Cr. ; 28 A. 210.

Illegal warrant what is—vide 11 P. R. 1895 Cr. ; 8 Ind. Cas 137, but see 34 A. 597 ; 17 P. R. 1897 Cr.

A search warrant can be issued only on credible information—19 P. R. 1871 Cr. ; 9 P. R. 1876 Cr. ; 2 N. W. P. 476.

Endorsement—A search warrant may be endorsed by a police officer, to whom it was originally directed, to another who is not of a rank below that authorized under the Act to enter and search, 30 A. 60, but see 22 P. R. 1895 Cr.

Conviction of owner—even in the absence of legal warrant is valid. 22 P. R. 1895 Cr. See also L. B. R. (1893—1900) 321.

Is used as a common gaming-house—Actual user is necessary, 19 A. L. 691.

* For Legislation alterations in U. P.—vide notes under section 3,

6. When any cards, dice, gaming-tables, cloths, boards, or other instruments of gaming, are found in any house, walled enclosure, room, or place, entered or searched under the provisions of the last preceding section or about the person of any of those who are found therein, it shall be evidence until the contrary is made to appear, that such house, walled enclosure, room, or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or any of his assistants.

Finding cards, &c., in suspected houses to be evidence that such houses are common gaming houses.

NOTES.

Alterations by Legislature—As regards alterations in the United Provinces. Vide Notes under Section 3.

Scope—It is only when the house is searched under the provisions of S. 5 that the presumption allowed by S. 6 arises. L. B. R., (1872—1892). 53 ; 548.

Evidence—The word "evidence" in this section means proof. A. W. N. 1884, 286.

Presumptions—Only arise when search is made under section 5 and a conviction cannot be sustained merely on the strength of such presumptions, in a case where the search was not duly made—6 N. L. R. 168, see also A. W. N. 1882, 132; L. B. R. (1872—1892) 407 ; 19 A. L. J. 691. But the fact of a certain house being a gaming house can be proved aliunde.—I. A. L. J. 116 Neither a conviction is vitiated if it had not caused any failure of justice and if the presumption ordinarily raised under S. 114 of the Evidence Act by the evidence as to search and the other evidence in the case support the conviction. A. W. N. 1884, 291.

Instruments of gaming—Cowries are not ordinarily instruments of gaming—18 A. 23—A. W. N. 1895, 139 ; 6 C. P. L. R. Cr. 17 ; 3 P. R. 1896 Cr., but if they are used in a particular case as instruments of gaming, they are instruments of gaming. 19 A 311.

7. If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or, in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Penalty on persons arrested for giving false names and addresses.

8. On conviction of any person for keeping or using any such

On conviction for keep-
ing gaming-house, instru-
ments of gaming to be de-
stroyed.

common gaming-house, or being present
therein for the purpose of gaming, the con-
victing Magistrate may order all the ins-
truments of gaming found therein to be de-

stroyed, and may also order all or any of the securities for money
and other articles seized, not being instruments of gaming, to be
sold and converted into money, and the proceeds thereof with all
moneys seized therein to be forfeited ; or, in his discretion, may
order any part thereof to be returned to the persons appearing to
have been severally thereunto entitled.

NOTES.

Forfeiture of property can be ordered in cases where there is a conviction
and is restricted to property belonging to convicted persons—5 P. R. 1898 Cr.
Forfeiture of money found on the persons of the gambler is illegal.—19
A. L. J. 765.

9. It shall not be necessary, in order to convict any person of

Proof of playing for stake
is unnecessary.

keeping a common gaming-house, or of
being concerned in the management of any

common gaming-house, to prove that any person found playing at
any game was playing for any money, wager, or stake.

10. It shall be lawful for the Magistrate before whom any

Magistrate may require
any person apprehended to
be sworn and give evidence.

persons shall be brought, who have been
found in any house, walled enclosure, room,
or place, entered, under the provisions of

this Act, to require any such persons to be examined on oath or
solemn affirmation, and give evidence touching any unlawful
gaming in such house, walled enclosure, room, or place, or touch-
ing any act done for the purpose of preventing, obstructing, or
delaying the entry into such house, walled enclosure, room, or
place or any part thereof, of any Magistrate, or officer authorized
as aforesaid.

No person so required to be examined as a witness shall be ex-
cused from being so examined when brought before such Magis-
trate as aforesaid, or from being so examined at any subsequent
time by or before the same or any other Magistrate, or by or be-
fore any Court on any proceeding or trial in any ways relating to
such unlawful gaming or any such acts as aforesaid, or from an-
swering any question put to him touching the matters aforesaid,
on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness,
who refuses to make oath or take affirmation accordingly, or to
answer any such question as aforesaid, shall be subject to be dealt
with in all respects as any person committing the offence described

in section 178 or section 179 (as the case may be) of the Indian Penal Code.

NOTES.

LEGISLATIVE ALTERATIONS—For legislative alterations of this section in the United Provinces, vide notes under section 3.

WHEN CANNOT BE EXAMINED—When the entry into the house is not under the provisions of this Act one of the co-accused could not be examined as a witness—1 A. L. J. 115.

11. Any person who shall have been concerned in gaming
 Witnesses indemnified. contrary to this Act, and who shall be
 examined as a witness before a Magistrate
 on the trial of any person for a breach of any of the provisions of
 this Act relating to gaming, and who, upon such examination,
 shall, in the opinion of the Magistrate, make true and faithful
 discovery, to the best of his knowledge, of all things as to which
 he shall be so examined, shall thereupon receive from the said
 Magistrate a certificate in writing to that effect, and shall be freed
 from all prosecutions under this Act for anything done before
 that time in respect of such gaming.

NOTES.

An approver can be acquitted if the condition is satisfied. 20 O. C. 4.

12. Nothing in the foregoing provisions of this Act contained
 Act not to apply to cer- shall be held to apply to any game of mere
 tain games. skill, wherever played.

NOTES.

Repealed in U. P.—Section 12 of the Public Gambling Act has been
 repealed in U. P. by the U. P. Act 1 of 1917.

Gaming and setting birds
 and animals to fight in
 public places.

13. A police-officer may apprehend
 without warrant—

any person found [playing for money or other valuable thing
 with cards, dice, counters, or other instruments of gaming, used in
 playing any game not being a game of mere skill,] in any public
 street, place, or thoroughfare, situated within the limits afore-
 said, or

any person setting any birds or animals to fight in any public
 street, place, or thoroughfare, situated within the limits afore-
 said or

any person there present aiding and abetting such public
 fighting of birds and animals.

Such person, when apprehended, shall be brought without
 delay before a Magistrate, and shall be liable to a fine not ex-
 ceeding fifty rupees, or to imprisonment, either simple or rigor-
 ous, for any term not exceeding one calendar month ;

and such police-officer may seize all instruments of gaming found in such public place, or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

NOTES.

Legislative alterations in U. P.—For the words within brackets the word "gaming" has been substituted in the united Provinces. (Vide U. P. Act I of 1917. S. 5)

Public place.—Signifies a place where the public resort as a matter of fact whether or not with the permission of a private owner. 19 Cr. L. J. 917. A canal bank where the public do not frequent is not "a public place." 3 Lah. L. J. 53. As regards what places are public places Vide A. W. N. 1881 p. 8; A. W. N. 1887. 75; A. W. N. 1881, 17; 19 P. R. 1882 Cr. 13 P. R. 1882 Cr.; S. C. 91, Oudh; A. W. N. 1895, 127; 1 A. L. J. 129; A. W. N. 1904, 92; 11 P. R. 1890 Cr.; 19 P. R. 1905 Cr.; L. B. R. (1872—1892) 317; 21 Ind. Cas. 910.

Holding a bullock race and betting thereon is not an offence under this section L. B. R. (1872—1892) 541.

Apprehended—A proceeding against a person not apprehended by the police is not illegal—L. B. R. (1893—1900) 251.

Confiscation—A magistrate is not competent to order the forfeiture of the money found on the spot—18 P. R. 1891 Cr.; S. C. 63 (Oudh); 26 A. 270; 40 A. 517.

Fine or imprisonment—Double punishment of fine and imprisonment is illegal. 25 P. R. 1880 Cr.

Game of chance—A game which consists of throwing a ring over a pin is a game of chance and not a game of skill—8 A. L. J. 1262.

Exception of games of mere skill. **13A.*** Nothing in this Act shall apply to any game of mere skill wherever played.

NOTE.

Vide 8 A. L. J. 1262.

14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure,† as to the amount of fine or imprisonment he may inflict.

NOTE.

Vide—2 Ind. Jur. N. S. 340.

* This section is in force in U. P. and has been added by s. 6 of the U. P. Act I of 1917.

† See Act V. of 1898, ss. 32, 34, and 446. This Act was extended to British Baluchistan under ss. 5 and 5 (a) of the Scheduled District Act. (XIV. of 1874).—See *Gazette of India*, 1898, Pt. II., p. 721.

15. Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year,

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

17. All fines imposed under this Act may be recovered in the manner prescribed by sections 386, 387, and 389 of the Code of Criminal Procedure,* and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Government or Chief Commissioner, as the case may be, shall from time to time direct.

* See now Act V. of 1898.

ACT XVI. OF 1867.

The Acting Judges Act, 1867.*

RECEIVED THE G.—G'S ASSENT ON THE 1ST MARCH 1867.*

An Act to authorize the making of acting appointment to certain Judicial offices.

WHEREAS the Governor-General of India in Council or the Local Government, as the case may be, is empowered to appoint by divers enactments to appoint the Judges of certain Courts in British India: And whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts; it is hereby enacted as follows:—

1. In every case in which the Governor-General of India in Council, or the Local Government, as the case may be, has power under any Act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor-General of India in Council or the Local Government, as the case may be, shall direct.

Every person so appointed to act temporarily as a Judge of any such Court shall have the powers, and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

*This title has been given by the Indian Short Titles Act (XIV. of 1897). Act XVI. of 1867 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dalbhum, and the Kolhan in the District of Singhbhum—See *Gazette of India*, 1881, Pt. I, p. 504.

ACT XIX OF 1867.

The Darjeeling (High Court's Jurisdiction) Act, 1867*

RECEIVED THE G.—G.'S ASSENT ON THE 8TH MARCH 1867.

An Act to make further provision for the administration of justice in the District of Darjeeling.

WHEREAS it is expedient to make further provision for the
Preamble, administration of justice in the District of
Darjeeling; It is hereby enacted as follows:—

[1. *Repeal of Act X. of 1863.] Repealed by Act XVI. of 1874.*

2. The High Court of Judicature for the Bengal Division of
High Court, Fort Will- the Presidency of Fort William shall have
iam, to exercise jurisdiction and exercise, with regard to the District
over Darjeeling. of Darjeeling, all such jurisdiction and
powers as it has and exercises with regard to any other territory.†

* This short title was given by Act I of 1903.

† I. e. Outside the local limits of its ordinary original civil jurisdiction.

ACT XXII OF 1867.*

RECEIVED THE G-G'S ASSENT ON THE 15TH MARCH 1867.

An Act for the regulation of Public Sarais and Puraos.

WHEREAS it is expedient to provide for the regulation of public Sarais and Puraos; It is hereby enacted as follows :—

Preamble.

1. [*Repeal of Bengal Regulation XIV of 1807, section 11, clause 5.*] *Repealed by Act XII of 1891.*

2. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

“Sarai” means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a sarai, the part so used of such building :

It also includes a purao so far as the provisions of this Act are applicable thereto :

“Keeper of a sarai” includes the owner, and any person having or acting in the care or management thereof :

“Magistrate of the District”† means the chief officer charged with the executive administration of a district in criminal matters, whatever may be his designation : ‡

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any sarai to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarai notice in writing of this Act, by leaving such notice for the keeper at the sarai, and shall by such notice require the keeper to register the sarai as by this Act provided.
- Notice of Act to be given to keepers of sarais.

* Act XXII of 1867 has been declared, under the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum ... See *Gazette of India*, 1881, Pt. I, p. 504.
 The North-Western Provinces Tarai Ditto 1876, Pt. I, p. 505.
 It has been declared to be in force throughout British India, except as regards the Scheduled Districts by Act (XV of 1874), s. 3; in the Santhal Parganas by Reg. (III of 1872), s. 3, as amended by Reg. (III of 1899), s. 3; and in Upper Burma (except the Shan States) by Act (XIII of 1898), s. 4.
 See also note to s. 17.

† This reference should now be read as “District Magistrate”; see Criminal Procedure Code (Act V of 1898), s. 3.

‡ Here certain words repealed by Act 10 of 1914 have been omitted.

Form of notice.

Such notice may be in the form in the schedule to this Act annexed or to the like effect.

4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate, or such other person as he shall appoint in this behalf, the names and residences of the keepers of all sarais within his jurisdiction, and the situation of every such sarai.

Registers of sarais to be kept

No charge shall be made for making any such entry.

5. After one month after the giving of such notice to registrar as by this Act provided, the keeper of any sarai or any other person shall not receive any lodger, or allow any person, cattle, sheep, elephant, camel, or other animal, or any vehicle, to halt or be placed in such sarai until the same, and the name and residence of the keeper thereof, shall have been registered as by this Act provided.

Lodgers, &c., not to be received in sarais until registered.

6. The Magistrate of the District may, if he shall think fit, refuse to register, as the keeper of the sarai a person who does not produce a certificate of character in such form, and signed by such persons, as the Local Government shall from time to time direct.

Magistrate may refuse to register keeper not producing certificate of character.

Duties of keepers of sarais, 7. The keeper of a sarai shall be bound—

(1) when any person in such sarai is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station.

(2) at all times, when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarai, and allow him to inspect the same or any part thereof.

(3) to thoroughly cleanse the rooms and verandahs and drains of the sarai, and the wells, tanks, or other sources from which water is obtained for the persons, or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf :

(4) to remove all noxious vegetation on or near the sarai, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarai :

(5) to keep the gates, walls, fences, roofs, and drains of the sarai in repair :

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at, or placed in, the sarai : and

(7) to exhibit a list of charges for the use of the sarai at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

8. The keeper of a sarai shall, from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing, as may be directed by the Magistrate, to such Magistrate, or to such person as the Magistrate shall appoint, every person who resorted to such sarai during the preceding day or night.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner, and at such intervals as may from time to time be ordered by him.

9. If any sarai, by reason of abandonment or of disputed ownership, shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner, or to the person, claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarai requiring the persons concerned therein, whoever they may be, to secure, enclose, clean, or clear the same :

and, if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarai, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarai, by the sale of any material found therein,

10. If a sarai, or any part thereof, be deemed by the Magistrate of the District to be in a ruinous state or likely to fall, or in any way dangerous to the persons or animals lodging in, or halting at, the sarai, he shall give notice in writing to the keeper of the sarai, requiring him forthwith to take down, repair, or secure (as the case may be) the sarai, or such part thereof, as the case may require.

If the keeper do not begin to take down, repair, or secure the sarai, or such part as aforesaid, within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarai as he shall think necessary to be taken down, repaired, or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarai, and shall be recoverable from him as hereinafter mentioned.

11. If any such sarai, or any part thereof, be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the overplus (if any) arising from such sale to the owner of such sarai on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

12. Whoever, being the keeper of any sarai, suffers the same to be in a filthy and unwholesome state or overgrown with vegetation, or, after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act :

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on, and cleanse or clear, the said sarai, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act, or with

any other law for the time being in force, and may from time to time, repeal, alter, and add to, the same.

14. All regulations made under this Act, and all repeals thereof, and alterations and additions thereto, shall be published in the local official Gazette.

Regulations to be published.

14. If the keeper of a sarai offend against any of the provisions of this Act, or any of the regulations made in pursuance of this Act, he shall, for every such offence, be liable, on conviction before any Magistrate, to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, during which the offence continues :

Penalty for infringing Act or regulations.

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

Saving of penalties incurred otherwise.

All penalties imposed under this Act any be recovered in the same manner as fines may be recovered under sections 386, 387, and 389 of the Code of Criminal Procedure.*

Recovery of penalties.

15. Where a keeper of sarai is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarai without the license in writing of the Magistrate of the District, who may either withhold such license, or great the same on such terms and conditions as he may think fit.

Effect of conviction for third offence.

16. No part of this Act, except section 8, shall apply to any sarai which may be under the direct management of the Local Government, or of any municipal committee.

Section 8 only to apply to certain sarais.

17. This Act shall, in the first instance, extend only to the territories under the Government of the Lieutenant-Governor of the North-West Provinces of the Presidency of Fort William in Bengal.

Extent of Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to extend this Act. † *mutatis mutandis* to any other part of the territories which are or may be ves-

Power to Local Government to extend Act.

* See Act V. of 1898.

† It has been extended to oudh.—See Notification No. 591, dated 25th July 1883. *North Western Provinces and Oudh Gazette*, 28th July, 1883, Pt. I., P. 433.

It has also been extended to the Punjab.—See Notification No. 4499, dated 13th December 1879; see *Punjab Gazette*, 18th December 1879, Pt. I. P. 727.

ted in Her Majesty or Her successors by the Statute 21 & 22 Vict., cap. 106 (*an Act for the better government of India*), except the towns of Calcutta, Madras, and Bombay.*

Short title.

18. This Act may be called "The Sarais Act, 1867."

SCHEDULE.

FORM OF NOTICE.

Take notice that on the day of 1867, an Act, called "The Sarais Act, 1867," was passed, and that before the day of 18 you, being the keeper of a sarai [*or purao*] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*], must have your sarai [*or purao*] registered, and that the register is to be kept at [*here state where the register is to be kept*], and that, if you do not have your sarai [*or purao*] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, for every day, during which the offence continues, and that, on your applying to [*here give the name and address of the person to keep the register*], he will register your sarai [*or purao*] free of all charge to you.

Dated the day of 18 .

* Here the words, "and the settlement of Prince of Wales's Island, Singapore, and Malacca, have been repealed by Act XII. of 1891,

ACT XXIII OF 1867.*

The Punjab Murderous Outrages Act 1867.†

RECEIVED THE G.-G.'S ASSENT ON THE 18TH MARCH 1867.

An Act for the Suppression of Murderous Outrages in certain Districts of the Punjab.

WHEREAS in certain districts of the Punjab, fanatics have frequently murdered or attempted to murder servants of the Queen and other persons :
 Preamble.
 And whereas the general law of the country is not adequate to suppress such offences ; It is hereby enacted as follows :—

1. It shall be lawful for the Lieutenant-Governor of the Punjab, with the previous consent of the Governor-General of India in Council, by a proclamation published in the official Gazettee, from time to time to declare any part or parts of the territories under his Government to be subject to the operation of all or any of the provisions of this Act, and also, by such proclamation and with such consent as aforesaid, from time to time to withdraw from the operation of such provisions any part or parts of the said territories which he may previously have declared to be subject thereto, and in like manner, as occasion shall require, to subject the same part or parts again to the operation of the same provisions or of any of them.

2. Any fanatic who shall murder, or who shall, within the meaning of the Indian Penal Code, section 307, attempt to murder, any servant of the Queen or other person, shall, on conviction thereof, be punished either with death or with transportation for life, and all his property, shall be forfeited to Government.

3. [*Offences under the Act to be offences under Penal Code.*]
Repealed by Act XVI. of 1874.

4. Whenever any fanatic shall be killed in the act of committing any such offence as aforesaid, or, being wounded and taken prisoner in the act of committing any such offence as aforesaid, shall afterwards die of his wounds, it shall

* Act XXIII. of 1867 has been repealed in British Baluchistan and the N. W. Frontier Province by Reg 4 of 1901. Reference to British Baluchistan and the Chief Commissioner, respectively. See British Baluchistan Regulation (I. of 1890), s. 4 (1).

† This short title has been added by Act 1 of 1903.

be competent to the Sessions Judge or Commissioner* who under the provisions hereinafter contained, would have had cognizance of the offence if the offender could have been brought to trial, to proceed to hold an inquest into the circumstances of the death of the offender, and on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, to adjudge that the whole of his property shall be forfeited to Government, and to dispose of his body as such Sessions Judge or Commissioner* shall think fit.

5. Subject to the provision contained in section 14 of this Act, any offence triable under this Act shall be tried by the Sessions Judge or Commissioner* of the Division in which it has been committed ; and in respect of all such offences, the Sessions Judge or Commissioner* shall follow the procedure prescribed for a Magistrate by section 149, Chapter XVII., and the provisions applicable to warrant-cases of the Code of Criminal Procedure :†

Provided that, if he shall be of opinion that any witness or evidence is offered for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness or evidence is material, and if the Sessions Judge or Commissioner* be not so satisfied, he shall not be bound to summon the witness or examine the evidence so offered.

6. Trials under this Act before the Sessions Judge or Commissioner* shall be conducted with the aid of two or more assessors as members of the Court.

The Sessions Judge or Commissioner* may appoint such persons (other than persons specified in section 405† of the Code of Criminal Procedure) at such time and in such manner as he may think fit to serve as assessors, and no person shall be exempt, within the meaning of section 406‡ of the same Code, from serving as such assessors.

The provisions of the Code of Criminal Procedure shall, save as aforesaid, apply to assessors appointed under this section.

7. When any trial under this Act is concluded, if the accused person be convicted, it shall be sufficient if the Court, in passing judgment, and in

* For the word "Commissioner" wherever it occurred, the words "Sessions Judge or Commissioner" have been substituted by Act IX. of 1877, s. 2.

† See now s. 204 and Ch. XXI. of Act V. of 1898.

‡ See now Act V. of 1898, ss. 278 and 320.

recording the finding and sentence, shall specify the offence of which he is convicted, and the Court shall immediately issue a warrant to the officer in charge of the jail in which the prisoner is confined to cause the sentence to be carried into execution, and such sentence shall be carried into execution accordingly.

No sentence of death passed under this Act shall require confirmation by any Court.

8. When any person shall be sentenced to death under this Act, his body shall be disposed of as the Sessions Judge or Commissioner by whom he was so sentenced shall direct.

9. The proceedings in every trial held under this Act shall be reported to the Lieutenant-Governor,* without unnecessary delay, by the officer before whom such trial shall have been held.

Proceedings to be reported to Lieutenant Governor.

10. Notwithstanding anything contained in the Code of Criminal Procedure,† “for in any other enactment for the time being in force,”‡ no appeal shall lie from any order or sentence under this Act.

No appeal from orders or sentences under Act.

11. If any Sessions Judge or Commissioner in whom jurisdiction is vested by this Act shall be of opinion that the accused person has committed an offence punishable under the Indian Penal Code, but that such offence is not contemplated by the preamble to this Act, the offender shall be dealt with in manner provided in such case by the Code of Criminal Procedure.†

Procedure when Sessions Judge or Commissioner thinks offender's crime not contemplated by Act

12. The said Lieutenant-Governor shall have, with respect to the confinement of any person charged with or suspected of an intention to commit any offence punishable under this Act, the powers which are vested in the Governor-General of India by any law regarding the confinement of persons charged with or suspected of State-offences ;§ and the provisions of any such law shall, *mutatis mutandis*, be applicable to all cases in which the Lieutenant-Governor shall proceed under the authority of this section.

Lieutenant Governor's powers as to confinement of persons under Act.

* In British Baluchistan the reference “Lieutenant-Governor” should be read as “Chief Commissioner.”—See British Baluchistan Law Regulation (I. of 1890), s. 4 (1).

† See Act V. of 1898.

‡ The words quoted have been substituted for the original by Act XII. of 1891, Sec. II.

§ See Regulation 111 of 1818,

13. Any person having the full powers of Magistrate may cause any person against whom there are in his judgment grounds of proceeding under the last preceding section, to be apprehended ; and, after such enquiry as he may think necessary, may detain such person in safe custody until he shall have received the orders of the said Lieutenant-Governor, to whom, in all such cases he shall report his proceedings without unnecessary delay.

14. The jurisdiction conferred by this Act on a Sessions Judge or Commissioner may be exercised, in the case of any offence punishable under this Act, by any person having the full powers of a Magistrate whom the Sessions Judge or Commissioner to whom he may be subordinate, or the said Lieutenant-Governor, shall, after the commission of such offence, specially invest with such jurisdiction.

15. It shall be lawful for the said Lieutenant-Governor, either on his own motion or at the request of the Chief Court of the Punjab, from time to time withdraw any class of cases from the operation of this Act.

16. With the previous consent of the said Lieutenant-governor but not otherwise, the said Chief Court may, from time to time, make and issue circular orders for the guidance of officers in cases under this Act; provided that such orders are consistent with the provisions herein contained.

All such order shall be published in the official Gazette, and shall be obeyed by the officers aforesaid.*

17. [*Repealed by Act XII. of 1891, Sch. I.*]

* Not in force in British Baluchistan.

ACT XXV OF 1867.

The Press and Registration of Books Act, 1867.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1867.

An Act for the regulation of Printing-Presses and newspapers, for the preservation of copies of books printed in British India ; and for the registration of such books.

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of

Preamble.

* This title has been given by the Indian Short Titles Act, (XIV. of 1897)

Act XXV. of 1867 has been declared to be in force in the whole of British-India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, in force in Upper Burma (except the Shan States by Act XIII. of 1898), s. 4; in the Santhal Parganas by Reg. (III. of 1872), s. 3. as amended by Reg. (III. of 1899), s. 3.

It is included in the Schedule to the Santhal Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	...	...	See Gazette of India...	1880, Pt. I., p. 672.
Aden	...	...	Ditto	... 1879, Pt. I., p. 434.
Territory of Peint	...	...	Ditto	... 1887, Pt. I., p. 145.
West Jalpaiguri, the Western Dvārs (that is, the country lying between the Tista and Sunkos rivers in the Jalpaiguri District), the Western Hills of Dārjiling, (that is, the hills west of the Tista river in the District of Dārjiling), the Dārjiling Tarāi, and the Domson Sub-division of the Dārjiling District	...	Ditto	...	1881, Pt. 1., p. 74.
The Districts of Hazāribāgh, Lohārdaga, and Mānbhum, and Pargana Dhālbhum, and the Kolhān in the District of Singhbhum	...	Ditto	...	1881, Pt. I., p. 504.
Kumāon and Garhwāl	...	Ditto	...	1876, Pt. I., p. 605.
The scheduled portion of the Mirzapur District	...	Ditto	...	1879, Pt. I., p. 383.
Jaunsar Bawar	...	Ditto	...	1879, Pt. I., p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismil Khan, Dera Ghazi Khan.	...	Ditto	...	1886, Pt. I., p. 48.
The District of Silhat	...	Ditto	...	1879, Pt. I., p. 631.
The District of Kamrup. Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvārs) and Kachar (excluding the North Kachar Hills	...	Ditto	...	1878, Pt. I., p. 533.
The Island of Perim	...	Ditto	...	1887, Pt. I., p. 5.

copies* of every book printed or lithographed in British India, and for the registration of such books ; It is hereby enacted as follows ;—

NOTES.

Translation—Copyright is not infringed by translation. 14 B. 586; 19 B. 557.

PART I.

PRELIMINARY.

Interpretation clause. **1.** In this Act, unless there shall be something repugnant in the subject or context,—

“Book” includes every volume, part or division of a volume and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed:

“British India” means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 and 22 Vict., cap. 106 (*an Act for the better government of India*):†

“Magistrate” means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police:‡

§ And in every part of British India to which this Act shall extend, “Local Government” shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

2, [*Repeal of Act XI of 1835.*] *Repealed by Act XIV of 1870.*

The Garo Hills, the Khasi and Jaintia Hills the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvairs in the Goalparah District ...

Dirto ... 1897 Pt. 1, p. 299.

It has been extended under the same Act, to the North-Western Provinces Tarai.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 506.

It has been declared, under the same Act, not to be in force in the District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I, p. 301.

* In the preamble, the word “three,” which had been originally inserted before the word “copies,” has been omitted, having been repealed by Act X. of 1890, s. 1.

† Here the words, “other than the settlement of Prince of Wales’s Island, Singapore, and Malacca,” have been omitted, having been repealed by Act XII. of 1891.

‡ In s. 1. in the definition of the word “Magistrate,” the words “and a Justice of the Peace” which had originally been inserted after the word “Police,” has been omitted, having been repealed by Act X of 1890, s. 2.

§ Certain words before this, repealed by Act 10 of 1914 have been omitted.

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) "the name"* of the publisher, and the place of publication.

NOTES

OBJECT—The intention of the section is to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper—16 M. 443.

PRINTER—includes printer of a portion 14 Bom. L.R. 40.

PUBLISHER—is a man who causes a book to be printed and offers it to the public for sale. A. W. N. 1887, 95; but does not include a vendor of a news paper or book. 23 C. 414.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:—

"I, *A B*, declare that I have a press for printing at——." And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

NOTES.

CHANGE OF PLACE does not require a new declaration on the part of the printer. 9 P. R. 1889 Cr.

A declaration made under this section is intended by the legislature to have a certain effect, namely, that of fastening responsibility on the conduct of the press on the person declaring in respect of matters where public interests are involved. 12 Bom. C. R. 675.

5. No printed prodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down?—

Rule as to publication of printed periodicals containing public news.

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published and shall make and subscribe, in duplicate, the following declaration :—

* The word quoted has been inserted by Act XII. of 1891.

"I, *A B*, declare that I am the printer [*or publisher, or printer and publisher*] of the periodical work entitled—and printed [*or published, or printed and published, as the case may be*] at——." And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted :

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary :

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

NOTES.

Prima facie evidence—Such declaration is a *Prima facie* evidence of publication and to throw on the accused the burden of showing that the actual publisher was not the person mentioned in the declaration. 9 M 387 = 1 W cir 576.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Authentication of declaration.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature or "other principal Civil Court of original jurisdiction for the place where"* the said declaration shall have been made.

Deposit.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

Inspection and copies of declaration.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person

Office copy of declaration to be *prima-facie* evidence.

* In s. 6, the words quoted have been substituted for the words "other Court within the local limits of, whose ordinary original civil jurisdiction."—See Act X. of 1890, s. 3.

was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

NOTES.

Liability—Person giving declaration must be presumed to know of all he was printing and publishing, 35 C. 141; 35 C. 948; 1 P 1905 Cr. But if he makes out his *bonafides* of his absence from the place he may be excused 38 C. 227 See also 32 M 338; 1 P. R 1905 Cr.

8. Provided always that any person who may have subscribed any such declaration as aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

"I, *A B*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——"

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration attested by the seal of the Court having custody of the original on payment of a fee of two rupees.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

PART III.*

DELIVERY OF BOOKS.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government as follows, that is to say :—

- Copies of books printed after commencement of Act to be delivered gratis to Government,
- (a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and
 - (b) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies as the Local Government may direct,

the copies so delivered being bound, sewed, or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints, and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

(i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, prints, or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or,

(ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

* Part III. has been substituted by Act X. of 1890, s. 4.

Receipt for copies delivered under last foregoing section.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

11. The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine.

Disposal of copies delivered under section 9.

any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State as the case may be.

PART IV.

PENALTIES.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for printing contrary to rule in section 3.

NOTE.

Omission to comply with section 3 is punishable under s. 12—5 P. B. 1909 Cr.

13. Whoever shall keep in his possession any such press as aforesaid without making such a declaration as is required by section 4 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Punishment for making false statement.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or who shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

NOTES.

The Local Government is empowered to annul declarations made under this Act and any acting against such order is punishable under this section—5 Vide L. C 7 and 8 of Act—7 of 1908.

16.* If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall, for every such default, forfeit to the Government such sum, not exceeding fifty rupees, as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered, or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints, or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall, for every such default, forfeit to the government such sum, not exceeding fifty rupees, as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints, or engravings which such publisher or other person ought to have supplied.

17* Any sum forfeited to the Government under the last foregoing section may be recovered under the warrant of the Magistrate determining the sum, or of his successor in office in the manner authorized by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code for the levy of a fine.

* Ss. 16 and 17 have been substituted by Act X. of 1890, s. 5.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the local Government shall from time to time direct.

PART V.

REGISTRATION OF BOOKS.

18. There shall be kept at such office, and by such officer as the local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registreted a memorandum of every book which shall have been delivered "pursuant to clause (a) of the first paragraph of section 9" of this Act.*

Registration of memoranda of books.
Contents of memorandum.

Such memorandum shall (so far as may be practiceable) contain the following particulars that is to say:—

(1) the title of the book and the contents of the title page, with a translation into English of such title and contents, when the same are not in the English language:

(2) the language in which the book is written:

(3) the name of the author, translator, or editor of the book, or any part thereof:

(4) the subject:

(5) the place of printing, and the place of publication:

(6) the name or firm of the printer, and the name or firm of the publisher:

(7) the date of issue from the press or of the publication:

(8) the number of sheets, leaves, or pages:

(9) the size:

(10) the first, second, or other number of the edition:

(11) the number of copies of which the edition consists:

(12) whether the book is printed or lithographed:

(13) the price at which the book is sold to the public: and

(14) the name and residence of the proprietor of the copyright or of any porton of such cypyright.

* In s. 18. the words, letter, and figure quoted have been substituted for the words and figure "pursuant to section 9."—See Act X. of 1890, s. 6.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the "copy thereof pursuant to clause (a) of the first paragraph of section 9."*

Registration of memorandum.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said catalogue,† be deemed to be an entry in the book of registry kept under Act No. XX. of 1847 (for the encouragement of learning in the territories subject to the Government of the East India Company, by defining, and providing for the enforcement of the right called Copyright therein); and the provisions contained in that Act as to the said book of registry shall apply *mutatis mutandis* to the said catalogue.

Effect of registration.

Act XX. of 1847 applied.

19. The memoranda registered during each quarter in the said catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said "Government of India"‡

Publication of memoranda registered.
Sending copies.

PART VI.

MISCELLANEOUS.

20. The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the object of this Act, and from time to time to repeal, alter, and add to such rules.§

* In s 18, the words, letter and figure quoted have been substituted for the words "copies thereof in manner aforesaid"—See Act X of 1890 s. 6.

† All such books as become the property of Government for educational purposes are exempted from this payment—Home Department No. 4822 dated 21st October 1869 *Gazette of India* Oct 23, 1869 p. 400.

‡ The words written quotations have been substituted by Act 10 of 1914.

§ Rules have been made under this section by the—
Madras Govt see *Fort Saint George Gazette*, dated 27th September 1867 p. 749.

Bombay Govt, see *Bombay Govt. Gazette*, dated 6th February 1862, p. 93.

, ditto ditto dated 20th July 1871, p. 783.

Bengal Govt., see *Calcutta Gazette*, dated 3rd July 1867, p. 1137.

N. W. P. Govt., see *Govt. Gazette, N. W. P.* dated 15th May 1867, pp. 327—29.

Punjab Govt., see *Govt. Gazette, Punjab*, dated 20th June 1867, p. 531.

Chief Commr., Oudh, see *Govt. Gazette, Oudh*, dated 26th July 1873, p. 8.

„ Central Provs., see *Central Provs. Gazette*, dated 13th July 1867, Supp.

„ British Burma, see *British Burma Gazette*, dated 9th October 1875, Pt II, pp. 189, 190.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Power to exclude any class of books from operation of Act.

21. The "Local Government"* may, by notification in the "Local Gazette" exclude any class of books "or papers"† from the operation of the whole or any part or parts of this Act.‡

* The words "or papers" have been added by Act—11 of 1915.

† The words within quotations have been substituted, by Act 38 of 1920.

‡ By virtue of the power vested in the Governor-General in Council by s. 21 of Act XXV. of 1867, entitled 'An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books,' His Excellency in Council is pleased to declare that the following publications are exempted from the provisions of the said Act:—

- 1.—[Cancelled. Home department, No. 3276, dated 16th August 1872, *Gazette of India*, 17th August 1872, Part I, p. 777.]
 - 2.—Acts of the Legislative Councils without notes or commentaries.
 - 3.—Price-lists and tradesmen's circulars.
 - 4.—Catalogues of books and other articles, auctioneers' notices, and advertisements.
 - 5.—Play-bills, comprising advertisements of theatrical and musical entertainments.
 - 6.—Decision of Courts of law without notes or commentaries.
 - 7.—Petitions and appeals addressed to constituted authority under the provisions of law.
 - 8.—Testimonials of private individuals or public officers.
 - 9.—Annual reports of schools, banks, societies, and firms.
 - 10.—Almanacs and calendars.
 - 11.—Labels affixed to articles of commerce"—Home Department, No. 5604, dated 21st December 1871, *Gazette of India*, 23rd December, 1871, p. 979.
-

ACT XXXII OF 1867.

The Chief Commissioner's Powers Act, 1867.

RECEIVED THE G.-G.'s ASSENT ON THE 18TH JULY 1867.

An Act to enable the Governor-General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor-General of India in Council.

WEREAS it is expedient to enable the Governor-General of India in Council to delegate to the "Chief Commissioner"* of the Central Provinces,† any power conferred on the Governor-General in Council as the Local Government of the territories under the administration of such Commissioner by any Act of the said Governor-General in Council; It is hereby enacted as follows:—

1.† It shall be lawful for the Governor-General of India in Council empowered to delegate to Chief Commissioners certain power, by a notification published in the *Gazette of India*, to delegate to the Chief Commissioner of the Central Provinces,† all or any of the powers heretofore or hereafter conferred by any Act of the Governor-General of India in Council on the Governor-General of India in Council as the Local Government of the territories under the administration of such Chief Commissioner; and all acts done by the Chief Commissioner, to whom any such power shall have been delegated as aforesaid, in exercise of the same power, shall be as valid as if they had been done by the said Governor-General in Council.

Short title

2. This Act may be called "The Chief Commissioners' Powers Act."

* The words within quotations have been substituted by Act 10 of 1911.

† In the preamble the words "and British Burma" and in section 1 "or British Burma" are repealed by Act (I of 1903) sch III part II.

‡ Under s. 1 the following powers have been delegated to the chief Commissioner of Burma:—

(a) the powers of the Governor-General in Council under Act XXX. of 1852 (*for the naturalization of Aliens*).—*Gazette of India*, 1874, p. 351.

(b) the powers of the Local Government under Act I. of 1859 (*for the amendment of the law relating to merchant Seamen*).—*Gazette of India*, 1873, p. 236.

(c) the powers of the Local Government under Act V. of (1861 *for the regulation of Police*), except s. 4.—*Gazette of India*, 1868, P. 358.

Note.—In Acts of the Governor-General in Council passed after Jan. 3, 1868, the expression "Local Government" includes a "Chief Commissioner."—See Act X. of 1897, s. 2 (29). All powers conferred or duties imposed upon the Chief Commissioner of British Burma by or under any enactment shall be deemed to be conferred or imposed by the Lieutenant-Governor of Burma—See Act (XIII, of 1898,) s. 15.

ACT V OF 1868.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH MARCH 1868.

*An Act to enable the Governor of Bombay in Council to delegate to the Commissioner in Sindh certain of the powers of a Local Government.**

1. It shall be lawful for the Governor of Bombay in Council, by a notification published in the *Bombay Government Gazette*, to delegate to the Commissioner in Sindh all or any of the powers conferred on the said Governor in Council, as the Local Government of the Province of Sindh, by any of the Bombay Regulations or by any Act of the Governor-General of India in council solely applicable to the Presidency of Bombay, or by any Act passed heretofore or hereafter by the Governor of Bombay in council, or by any of the Acts of the Governor-General of India in Council mentioned in the schedule to this Act.

2. It shall be lawful for the Governor of Bombay in Council,† to delegate to the Commissioner in Sindh all or any of the powers heretofore or hereafter conferred by any Act of the Governor-General of India in Council on the Governor of Bombay in Council as the Local Government of the Province of Sindh.

3. All acts done by the Commissioner in Sindh under the authority of any power so delegated shall be as valid as if they had been done by the Governor of Bombay in Council.

SCHEDULE †

Act XXXVI. of 1850 (to enable improvements to be made in towns.

"The Foreign Jurisdiction and Extradition Act, 1879" §

Act XXV. of 1861 for (simplifying the procedure of the Courts of criminal Judicature not established by Royal Charter).

Act VI. of 1863 (to consolidate and amend the laws relating to the administration of the Department of Sea-customs in India).

"The Indian Forest Act, 1878." §

* See Bombay Act. (III of 1901). s. 3 (3).

† Here certain words repealed by Act—38 of 1920 have been omitted.

‡ The Schedule, so far as it relates to Act XXVI. of 1850, has been repealed by Act XII. of 1891, Sch. I.

§ The words quoted have been substituted by Act XII. of 1891, Sch. II,

ACT XXIV OF 1868.*

RECEIVED THE G.-G.'S ASSENT ON THE 1ST OCTOBER 1868.

An Act to prohibit the practice of inoculation in Kumaon and Garhwal.

WHEREAS it is expedient to prohibit the practice of inoculation with the small-pox in the districts of Kumaon and Garhwal; It is hereby enacted
Preamble.
as follows:—

1. Whoever produces or attempts to produce in any person by inoculation with variolous matter, or by will-ful exposure to variolous matter, or to any thing impregnated therewith, or who wilfully, by any other means, produces the disease of small-pox in any person, shall be liable, on conviction before a Magistrate, to imprisonment for a term not exceeding three months, or to fine not exceeding two hundred rupees, or to both.
Penalty for inoculating.

2. If any person having been inoculated with the small-pox in a place to which this Act does not extend, shall afterwards enter any place to which this Act extends, before the date† of forty days from the date of such inoculation, or without a certificate from a qualified medical officer that such person is no longer likely to cause contagion, such person shall be liable, on conviction, before a Magistrate, to imprisonment for a period not exceeding three months, or to a fine not exceeding two hundred rupees, or to both.
Penalty on inoculated person entering place to which Act extends.

3. Whenever an offender is sentenced to pay a fine under this Act, the convicting Magistrate may award any portion not exceeding one-half of such fine to the person on whose information the offender has been convicted.
Reward to informer.

4. This Act extends only to the district of Kumaon and Garhwal.
Extent of Act.

* Act XXIV. of 1868 has been extended to the Tarai Paraganas by notification under the Scheduled Districts Act (XIV. of 1874).

† Sic, read expiry.

ACT I OF 1869.

The Oudh Estates Act.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH JANUARY 1869.

An Act to define the Rights of Taluqdars and Others in certain Estates in Oudh, and to regulate the Succession thereto.

WHEREAS after the re-occupation of Oudh by the British Government in the year 1858, the proprietary right in divers estates in that province was, under certain conditions, conferred by the British Government upon certain taluqdars and others ; and whereas doubts may arise as to the nature of the rights of the said taluqdars and others in such estates, and as to the course of succession thereto; and whereas it is expedient to prevent such doubts, and to regulate such course, and to provide for such other matters connected therewith as are hereinafter mentioned; It is hereby enacted as follows :—

Preamble.

I.—Preliminary.

Short title.
Extent of Act.

1. This Act may be cited as "The Oudh Estates Act, 1869," and shall extend only to the estates hereinafter referred to.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"Transfer," with its grammatical variations and cognate expressions, means to make an alienation *'inter vivos,'* whether before or after the commencement of this Act;""

"Will" means the legal declaration of the intentions of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death:

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions; it is considered as forming an additional part of the will:

Sign.

"Sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include 'maik' with its grammatical variations and cognate expressions ;""

* The words within quotations have been substituted by U. P. Act III of 1910.

“‘Attest’, with its grammatical variations when used with reference to any instrument other than a will, means to sign such instrument as a witness in the presence of the executant after having seen the executant sign the same or after having received from the executant a personal acknowledgment of his signature to the same;

“Provided that, where attestation by more than one witness is required, in shall not be necessary that more than one of such witnesses should be present at the same time :

“Provided also that no particular form of attestation shall be required.”*

“Registered”† means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh :

“Minor” means any person who shall not have completed the age of eighteen years; and “minority” means the status of such person :

“Taluqdar” means any person whose name is entered in the first of the lists mentioned in section 8 :

“Grantee’ means any person whose name is entered in the fifth or sixth of the lists mentioned in section 8 ;”*

“Estate means——

(a) the *Taluqua* or immoveable porperty acquired or held by a taluqdar or grantee in the manner mentioned in section 3, section 4 or section 5 and (b) the other immoveable property situated in the united provinces in which a taluqdar or grantee or his heir or legatee or a transferee referred to in section 14 has a separate, permanent, heritable and transferable right, and in respect of which he has made a declaration in accordance with the provisions of section 32 A.

“Heir’ means a person who has inherited or inherits otherwise than as a widow or a mother, an estate whether before or after the commencement of this Act”*

“Legatee’ means a person to whom there has been or is bequeathed an estate whether before or after the commencement of this Act.*

* This definition has been added by s 2 of U. P. Act No 8 of 1910.

† For a new definition of the word “registered,” See Act X of 1885, s. 1.

Explanation—The words 'heir' and legatee' used with reference to a *taluqdar* or grantee or a person whose name has been inserted in the list referred to in section 31A, subsection (3), are not restricted to the immediate heirs and legatee of such *taluqdar*, grantee or person**

Words expressing relationship denote only legitimate relatives, but apply to children in the womb who are afterwards born alive

II.—Rights and Liabilities of Taluqdars and Grantees.

3. Every Taluqdar with whom a summary settlement of the Taluqdars to have heritable and transferable rights in their estates. Government revenue was made between the first day of April 1858 and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a Talqudari sanad has been granted.

shall be deemed to have thereby acquired a permanent, heritable, and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or Kabuliyat executed by such taluqdar when such settlement was made,

or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or, if appealed from, having been affirmed,

subject to all the conditions affecting the Taluqdar contained in the orders passed by the Governor-General of India on the tenth and nineteenth days October 1859, and re-published in the first Schedule hereto annexed, and subject also to all the conditions other than those relating to succession contained in the sanad under which the estate is held.

* *Explanation*—Notwithstanding anything contained in the Crown Grants Act, 1895, the conditions of the *sanad* relating to succession, in so far as they are inconsistent with the provisions of this Act, shall not apply to the estate." *

4. Every person whose lands the proclamation issued in Oudh in the month of March 1858 by order of the Governor-General of India specially exempted from confiscation, and whose names are contained in the second schedule hereto annexed, shall be deemed to possess, in the lands for which such person executed a kabuliyat between the first day of April 1858 and the first day of April 1860,

* The words within quotations have been substituted by Cr. P Act 3 of 1910.

the same right and title which he would have possessed thereto if he had acquired the same in the manner mentioned in section 3 ; and he shall be deemed to hold the same subject to all the conditions affecting taluqdars which are referred to in the said section, and to be a taluqdar for all the purposes of this Act.

5 Every grantee shall possess the same rights, and be subject to the same conditions in respect of the estate comprised in his grant as a taluqdar possesses and is subject to, under section 3, in respect of his estate.

Grantees' rights and liabilities,

Saving of certain redemption-suits,

6. Nothing in sections 3, 4 and 5, or in the said orders, or in any sanad, shall be deemed to bar a suit for redemption.

(a) Where the instrument of mortgage was executed on or after the thirteenth day of February 1844, and fixed no term within which the property comprised therein might be redeemed, or

(b) Where the instrument of mortgage fixed a term within which the property comprised therein might be redeemed, and such term did not expire before the thirteenth day of February 1856.

7. If a taluqdar or grantee, or any heir or legatee of a taluqdar or grantee, desire that any elephants, Jewels, arms, or other articles of moveable property belonging to him, shall devolve along with his estate, he shall take an inventory of such articles. Such inventory shall be signed by him and deposited in the office of the Deputy Commissioner of the district wherein such estate or the greater part thereof is situate ; and thereupon such of the said articles as shall not have been transferred shall (so far as may be possible) be used and enjoyed by the person who, under or by virtue of this Act, is for the time being in actual possession or in receipt of the rents and profits of the said estate or the greater part thereof, otherwise than as mortgagee or lessee.

Heirlooms,

III.—Lists of Taluqdars and Grantees.

8. Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely :—

Preparation of lists of taluqdar and grantees.

First—A list of all persons who are to be considered taluqdars within the meaning of this Act;

Second—A list of the taluqdars whose estates, according to the custom of the family on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir;

Third—A list of the taluqdars, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Fourth—A list of the taluqdars to whom the provisions of section 23 are applicable;

Fifth—A list of the grantees to whom sanads or grants have been or may be given or made by the British Government, up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Sixth—A list of the grantees to whom the provisions of section 23 are applicable.

9. When the lists mentioned in section 8 shall have been approved by the Chief Commissioner of Oudh, they shall be published in the "local official Gazette"* After such publication, the first and second of the said lists shall not, except in the manner provided by section 30 or section 31, as the case may be, be liable to any alteration in respect of any names entered therein.

If, at any time after the publication of the said lists, it appears to the "Local Government."* that the name of any person has been wrongly omitted from, or wrongly entered in, any of the said lists, "the Local Government."* may order the name to be inserted in the proper lists, and such name shall be published in the *Gazette of India* in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

10. No persons shall be considered taluqdars or grantees within the meaning of this Act other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists, and shall regard them as conclusive evidence that the persons named therein are such taluqdars or grantees.

*The words within quotations have been substituted by Act 38 of 1920.

IV.—Powers of Taluqdars and Grantees to transfer and bequeath.

11. Subject to the provisions of this Act, and to all the conditions other than those relating to successions Taluqdars and grantees may transfer and bequeath. under which the estate was conferred by the British Government, every taluqdar and grantee, and every heir and legatee of a taluqdar and grantee, of sound mind and not a minor, shall be competent to transfer the whole or any portion of his estate, or of his right and interest therein, during his life-time, by sale, exchange, mortgage, lease, or gift, and to bequeath by his will to any person the whole or any portion of such estate, right, and interest.

A married woman may make a bequest under this Act of any property which she could alienate by her own act during her life.

Persons who are deaf or dumb or blind are not thereby incapacitated for making a transfer or bequest under this Act if they are able to know what they do by it.

One who is ordinarily insane may make a transfer or bequest under this Act during an interval in which he is of sound mind.

No person can make a transfer or bequest under this Act while he is in such a state of mind, whether from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

A transfer and a will, or any part of a will, the making of which has been caused by fraud coercion, or by such importunity as takes away the free agency of the transferor or testator, is void.

12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the life-time of one or more persons living at the decease of the transferee or testator and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing transferred or bequeathed is to belong.

13.* (1) "No *taluqdar* or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in section 14, and no heir or legatee of such transferee, shall have power to give his estate, or any portion thereof, or any interest therein—

Procedure relating to transfers by gift.

* Section 13 has been substituted by U. P. Act III of 1910,

(a) to any person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the donor died intestate as to his estate at a time when the gift took effect,

except by a registered instrument, signed by the donor and attested by two or more witnesses,

(b) to any person other than a person mentioned in clause (a),

except by an instrument signed by the donor and attested by two or more witnesses not less than three months before his death and presented for registration within one month from the date of its execution and registered.

(2) No gift made under sub-section (1) shall be valid unless followed, within six months from the date of execution of the instrument of gift, by delivery by the donor, or his representative in interest, of possession of the property comprised there in."

"13A.* No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in section 14, and no heir or legatee of such transferee, shall have power to bequeath his estate, or any portion thereof or any interest therein—

Procedure relating to be-
quests.

(1) (a) "to a person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate, at the time when the bequest took effect,

(b) to his daughter,

(c) to a son of his daughter, or

(d) to a younger son,

except by a will executed and attested;

"(2) to a person who might in the absence of other heirs, have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate, at the time when the bequest took effect, except by a will duly executed and attested not less than three months before the death of the testator and presented for registration within one month from the date of its execution and registered ;

* Section 13 A has been added by U. P. Act III of 1910

(3) to any person other than a person mentioned in clauses (1) and (2) except by a will duly executed and attested not less than three months before the death of the testator and registered according to the law for the time being in force relating to the registration of assurances, but presented for such registration within one month from the date of its execution."

"14.* If any taluqdar or grantee, or his heir or legatee, shall heretofore have transferred or bequeathed, or if any taluqdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath the whole or any portion of his estate—

(a) to another taluqdar or grantee, or his heir or legatee, or

(b) to any of the persons mentioned in clauses (1) and (2) of section 13-A,

the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator.

"Provided that, if the transferee or legatee had or has, at any time when the transfer or bequest took or takes effect an estate, the succession to which was or is governed by the rules contained in section 22, the transferee or legatee shall hold such property subject to those rules.

"15.* It any Taluqdar or grantee, or his heir or legatee, shall heretofore have transferred or bequeathed, or if any Taluqdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath the whole or any portion of his estate to any person who did not at the time when the transfer or bequest took effect belong to any of the classes specified in section 14, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee have bought the same from a person not being a Taluqdar or grantee heir or legatee."

"16.* No transfer, otherwise than by gift, of any estate, or of any portion thereof, or of any interest therein made by a taluqdar or grantee, or by his heir or legatee, or by a transferee mentioned in section 14, or by his heir or legatee, under the provisions of this Act, shall be valid unless made by a registered instrument signed by the transferor and attested by two or more witnesses."

* Section 14 has been substituted by U. P. Act III of 1910.

* Sections 15 and 16 have been added by U. P. Act III of 1910.

17. [Further requisites to validity of gifts *intervivos*—Repealed by U. P. Act III of 1910.]

"18.* No Taluqdar or grantee, and no heir or legatee of a Taluqdar or grantee, and no transferee mentioned in section 14, and no heir or legatee of such transferee, shall have power to give his estate, or any portion thereof, or any interest therein, to religious or charitable uses, except by an instrument of gift signed by the donor and attested by two or more witnesses not less than three months before his death and presented for registration within one month from the death of its execution and registered.

VI.—Testamentary Succession.

19. Sections 49, 50, 51, 54, 55, and 57 to 77 (both inclusive), and sections 82, 83, 85 and 88 to 98 (both inclusive), of the Indian Succession Act No. X. of 1865), shall apply to all wills and codicils made by any Taluqdar or grantee, or by his heir or legatee, "or by any transferee mentioned in section 14, or by the heir or legatee of such transferee"*

Under the provisions of this Act, for the purpose of bequeathing to any person his estate, or any portion thereof, or any interest therein : Provided that marriage shall not revoke any such will or codicil : provided also that nothing herein contained shall affect wills made before the passing of this Act.

In applying the said sections to wills and codicils made under this Act, all words hereinbefore defined, and occurring in such sections shall (unless there be something repugnant in the subject or context) be deemed to have the same meaning as this Act has attached to such words respectively.

20. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, having a child, parent, brother, unmarried sister, or a nephew being the naturally-born son of a brother of such taluqdar or grantee, heir or legatee, shall have power to bequeath his estate or any part thereof, or any interest therein exceeding in amount or value the sum of two thousand rupees to religious or charitable uses, except by a will executed not less than three months before his death, and registered within one month from the date of its execution.

VII.—Intestate Succession.

21.* In the next following section, unless where there is something repugnant in the context, the words 'son,' 'descendants,' 'daughter,' 'brother,' 'son,' 'descendants,' 'brother,' and 'male agnate'* apply only to *Najib-ul-tarfain*, and

* Section 18 and words within quotations have been inserted by U. P. Act III 1910.

the word 'widow' applies only to a woman belonging to the *ahl-i-bradari* of her deceased husband.

22. * "If any taluqdar or grantee whose name shall be inserted in the second, third, or fifth of the lists mentioned in section 8, or his heir or legatee, or if any *talugdar*, grantee, heir or legatee whose name shall be inserted in the list referred to in section 31 A, subsection (3), or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, namely :—

(1.) To the eldest son of such *talugdar* or grantee, heir, or legatee, and his male lineal descendants, subject to the same conditions and in the same manner as the estate was held by the deceased ;

(2.) Or if such eldest son of such taluqdar or grantee, heir or legatee, shall have died in his life time, leaving male lineal descendants, then to the eldest and every other son of such eldest son, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(3.) Or if such eldest son of such *talugdar* or grantee, heir or legatee, shall have died in his fathers life-time without leaving male lineal descendants, then to the second and every other son of the said taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(4.) Or in default of such son or his male lineal descendants, then to such person as the said *talugdar*, grantee, heir or legatee, shall have adopted, and his male lineal descendants, subject as aforesaid ;

(5.) Or in default of such adopted son, or his male lineal descendants then to the eldest and every other brother of such *talugdar* or grantee, heir or legatee, successively according to their respective seniorities, and their respective male lineal descendants, brothers of the whole blood and their descendants being preferred to brothers of the half blood and their descendants, subject as aforesaid ;

(6.) Or in default of any such brother, or his male lineal descendants, then to the widow of the deceased *talugdar* or grantee, heir or legatee, for her life only ; or, if there be more widows than one, to the widow first married to such taluqdar or grantee, heir or legatee, for her life time only ;

* The words within quotations and section 22 have been substituted by U. P. Act III of 1910.

(7.) and on the death of such widow, then to such son as the said widow shall, with the consent in writing of her deceased husband, have adopted, and his male lineal descendants, subject as aforesaid :

“Provided that after the expiration of six months from the commencement of this Act such consent shall be expressed by means of a registered instrument or by means of a will or codicil, executed and attested in the manner required by this Act.

(8.) Or on the death of such first married widow and in default of a son adopted by her with such consent as aforesaid, and his male lineal descendants, then to the other widow, if any, of such *taluqdar* or grantee, heir or legatee, next in order of marriage, for her life, and on the death of such other widow, to a son adopted by her with such consent as aforesaid, and his male lineal descendants ; or in default of such adopted son, then to the other surviving widows in the order of their marriages, for their respective lives, and on their respective deaths, to the sons so adopted by them respectively, and to the male lineal descendants of such sons respectively, subject as aforesaid ;

(9.) Or in default of any such widow or any such adopted son or any such male lineal descendants, then to the mother of the deceased *taluqdar* or grantee, heir or legatee, for her life-time only ;

“*Explanation.*—In this clause the word “mother” does not include a step-mother ; and in the case where the deceased was an adopted son, it means that wife or widow of the father who joined in or made the adoption, or if the adoption was made by the father alone and there are at the time of the death of the deceased more widows than one, it means the one who was *first* married and, on her death, the other surviving widows in the order of their respective marriages in succession ;

(10.) Or in default of or on the death of such mother, then to the nearest male agnate according to the rule of lineal primogeniture subject as aforesaid ;

(11.) Or in default of any such agnate, then to such person as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion or tribe of such *taluqdar* or grantee, heir or legatee, are subject :

Provided that, when there are more persons than one so entitled, the estate shall descend to a single person according to the following rules, that is to say :—

- (i) Where among such persons some are connected by blood relationship and some by reason of marriage, the blood relations shall exclude the relations by marriage :.. ..

- (ii) where among such persons some are related by the whole blood and some by the half blood those related by the whole blood shall exclude those related by the half blood ;
- (iii) where, subject to the provisions of rules (i) and (ii), among such persons some are related through males only and some through females, the person related through males only shall exclude the others ; and amongst the others those shall be preferred in whose relationship step from the deceased proceed furthest through males ;
- (iv) where among such persons some stand in a nearer and some in a more remote relationship to the deceased, but both are equally qualified under the three preceding rules, those in the nearer degree shall exclude those in the more remote ;
- (v) where such persons stand in equal degree of relationship to the deceased and are equally qualified under the four preceding rules, the estate shall descend to the eldest male in the senior line, but if there be no male heir in that line, then to the eldest male in the next senior line in which there is a male heir ; and if there be no male heir in any line, then to the eldest female in the senior line.

“Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section 11.”

23. Except in the cases provided for by section 22, the succession to all property left by Taluqdars and grantees, and their heirs and legatees, dying intestate, shall be regulated by the ordinary law to which members of the intestate's tribe and religion are subject.

VIII.—Maintenance

24. When any taluqdar or grantee, or his heir or legatee, dies leaving him surviving such relatives as are hereinafter mentioned, the person for the time being in the possession of his estate or the rents and profits thereof shall be liable to pay to each of such relatives during his or her life, or for such other period as is hereinafter mentioned, by twelve equal monthly payments, an annuity in accordance with the custom of the country not exceeding such amount as is hereinafter mentioned : Provided that such relative was at the date of the death of the deceased living together with

Maintenance of surviving relatives of taluqdars and grantees.

him : Provided also that such relative is and continues to be without any other adequate means of maintenance.

If any part of such estate shall have been transferred or bequeathed by the deceased, the person for the time being in possession of such part, or of the rents and profits thereof, shall be liable to pay proportionate parts of the said annuities during the continuance thereof respectively.

25. In the case of the grand-parents, parents, and sinor widows of the deceased, the maximum amount of the annuity shall be as follows :—

Grand-parents, parents
and senior widows.

- (a) where the annul revenue payable to government in respect of the estate is or exceeds 1,50,000 rupees—a sum not exceeding 6,000 rupees :
- (b) where such revenue is or exceeds 1,00,000 rupees, but is less than 1,50,000 rupees—sum not exceeding 2,400 rupees :
- (c) where such revenue is or exceeds 50,000 rupees, but is less than 1,00,000—a sum not exceeding 1,200 rupees :
- (d) where such revenue is or exceeds 25,000 rupees, but is less than 50,000 rupees—a sum not exceeding 600 rupees :
- (e) where such revenue is or exceeds 15,000 rupees, but is less than 25,000 rupees—a sum not exceeding 360 rupees.
- (f) where such revenue is or exceeds 7,000 rupees, but is less than 15,000 rupees—a sum not exceeding 240 rupees : and
- (g) where such revenue is less than 7,000 rupees—a sum not exceeding 180 rupees.

In the case of a junior widow of the deceased, the maximum amount of the annuity shall be one-half of maximum amount to which a senior widow of the deceased would be entitled under the former part of this section.

26. In the case of brothers and minor sons of the deceased, the maximum amount of the annuity shall be a sum not more than 1, 200 rupees.

Brothers and minor sons.

In the case of nephews of the deceased being fatherless minors, the maximum amount of the annuity shall be a sum not more than 600 rupees,

Nephews.

27. In the case of unmarried daughters of the deceased widows of his sons and brothers, and his widows not of his *ahl badari*, the maximum amount of the annuity shall be a sum not more than 360 rupees.

Unmarried daughters
widows of sons and brothers
and inferior widows

Continuance of annuities.

28. Subject to the provisions hereinbefore contained, the said annuities shall continue—

- (a) in the case of a minor son or a minor nephew, till he ceases to be a minor ;
- (b) in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenace ; and
- (c) in all other cases, till the annuitant dies.

IX.—Miscellaneous.

29. Every Mohammadan Taluqdar, grantee, heir, or legatee, and every widow of a Muhammadan taluqdar or grantee, heir or legatee, with the consent in writing of her deceased husband, shall, for the purpose of this Act, have power to adopt a son whenever, if he or she were a Hindu, he or she might adopt a son.*

29.A.* No adoption made by a *taluqdar* or grantee or by his heir or legatee, or by the widow of any such *taluqdar* or grantee, heir or legatee, shall be deemed to be valid unless, in addition to the requirements, if any, imposed by the personal law of the adopter, the fact of such adoption has been declared by the adopter in a writing executed and attested in manner required in case of a will and registered."

30. Any taluqdar or grantee whose name has been entered in the third or fifth of the lists mentioned in section 8, or his heir or legatee, may at any time hereafter, present to the "Local Government"* a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of an instrument of gift, that he is desirous that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section 22, and that it shall in future be regulated by the ordinary law to which Members of his tribe and religion are subject.

On receiving such declaration, the said "Local Government"* shall cause to be inserted the name of such taluqdar or grantee, heir or legatee, in the fourth or sixth (as the case may be) of the

* Certain words after this being repealed by U. P. Act III of 1910 have been omitted.

lists mentioned in section 8, and shall cause a note thereof to be made in the proper place in the third or fifth (as the case may be) of the said lists, and the succession to such estate shall thenceforward, in case of intestacy, be regulated in the manner provided by section 23.

31. Any taluqdar or grantee, heir or legatee, may, at any time hereafter, present to the "Local Government"* a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of instruments of gift, that he is desirous that his estate should in future be held subject to the ordinary law of succession to which members of his tribe and religion are subject.

On receiving such declaration, the "Local Government"* shall cause a note thereof to be made in the proper places in each of the lists mentioned in section 8 in which the name of such taluqdar or grantee, heir or legatee, has been entered, and thenceforward none of the provisions of this Act shall apply to such estate, which shall thenceforward be held subject in all respects to the ordinary law of succession to which members of his tribe and religion are subject.

31.A* Any taluqdar whose name has been inserted in the fourth of the lists prepared under section 8, or any grantee whose name has been inserted both in the first and in the sixth of the said lists or the heir or legatee of such taluqdar or grantee, may declare that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section 23 and that it shall in future be regulated in the manner described in section 22.

(2) "Every such declaration shall be in writing, signed by the declarant, attested by two or more witnesses and registered, and shall be presented to the Local Government.

(3) "On receiving such declaration the Local Government shall cause the name of such taluqdar, grantee, heir or legatee, to be inserted in a list which shall, as occasion may arise, be published in the Gazette of India, and shall cause a note thereof to be made in the proper place in the fourth or sixth (as the case may be) of the said lists.

(4) Thenceforward the succession to the estate shall, in the case of intestacy, be regulated in the manner provided by section 22.

* Words within quotations have been added by U. P Act III of 1920.

(5) The Courts shall take judicial notice of such lists and shall regard it as conclusive evidence that such declaration has been made, registered and presented as above to the Local Government, and that the Local Government has made the note referred to in sub-section 3.

32. Nothing hereinbefore contained shall affect any right Saving of rights of creditors which the creditors of any person making a "transfer, bequest or declaration"* under the provisions of this Act would have possessed as against the property comprised in such transfer or bequest if this Act had not been passed.

32. A* (1) "Any taluqdar or grantee, or his heir or legatee, Power to declare property subject to the Act. may, by a registered instrument bearing a non-judicial stamp of fifteen rupees, signed by him and attested by two or more witnesses, declare that the immoveable property situated in the United Provinces in which he has a separate, permanent, heritable and transferable right, and which is specified in the instrument, is a part of his estate for the purposes of this Act.

"Such declaration shall take effect from the date of the registration thereof.

(2) It shall be the duty of the registering officer to furnish the Collector of every District in which any portion of the property is situated with a properly authenticated copy of the declaration, and on receipt of such copy of the collector shall cause a note to be made in the record of rights relating to the immoveable property specified and shall also cause a copy of the declaration to be published in the Gazette in English and in the Vernacular."

33. And whereas bodies of taluqdars have in several cases Awards as to compensation and maintenance. made awards respecting the provision to be made for certain relatives of taluqdars, and it is expedient to render such awards legally enforceable, it is hereby further enacted that every such award shall, if approved by the Financial Commissioner of Oudh,* and filed in his Court within six months after the passing of this Act, be enforceable as if a Court of competent jurisdiction had passed judgment according to the award, and a decree had followed upon such judgment.

* Words within quotations and section 32 A. have been added by U. P Act III of 1910.

* Now the Chief Commissioner of Oudh.—See Notification No. 316, dated Sep. 22, 1871. in *Gazette of India*, 1871, Pt. I., p. 737.

SCHEDULES.

FIRST SCHEDULE.

(See Section 3.)

I.

*From C. BEADON, ESQ., Secretary to the Government of India.**Foreign Department, to C. J. WINGFIELD, ESQ., Chief
Commissioner of Oudh—(No. 6268, dated 10th
October 1859)*

I AM directed by the Governor-General in Council to acknowledge the receipt of your secretary's letters noted in the margin, relative to the taluqdari settlement of Oudh,

No. 1091, dated the 4th June.
No. 1377, dated the 15th July.

2. His excellency in Council, agreeing with you as to the expediency of removing all doubts as to the intention of the Government to maintain the taluqdars in possession of the taluqas for which they have been permitted to engage, is pleased to declare that every taluqdar with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including perpetual privilege of engaging with the Government for the revenue of the taluqua.

3. This rights is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zamindars and village-occupants from extortion, and of upholding their rights in the soil in subordination to the taluqdars.

4. The Governor-General in council desires that you will have ready, by His Excellency's arrival at Lakhnau, a list of the taluqdars upon whom a permanent proprietary right has now been conferred; and that you will prepare sanads to be issued to these taluqdars at that time. The sanads will be given by, and will run in the name of, the Chief Commissioner, acting under the authority of the Governor-General.

5. I am directed to add that, as regards zamindars and others, not being taluqdars, with whom a summary settlement has been made, the orders conveyed in the Limitation Circular No. 31 of 28th January 1859, must not be strictly observed. Opportunity must be allowed at the next settlement to all disappointed claimants to bring forward their claims, and all such claims must be heard and disposed of in the usual manner.

II.

From C. BEADON, ESQ. Secretary to the Government of India, Foreign Department, with the Governor-General, to Chief Commissioner, Oudh—(No. 23, dated 19th October 1859.)

I AM directed by his Excellency the Governor-General to acknowledge the receipt of your demi-official letter of the 15th instant, enclosing a from of sanad to be given to the taluqdars of Oudh, granting them a full and permanent proprietary right in the taluqas for which they have severally been permitted to engage at the summary settlement.

2. This form of sanad is generally approved, and a revised copy, with some few alterations, is herewith enclosed for adoption and for careful translation into the Hindustani language, in which the sands will be prepared.

3. The sanads declare that while, on the one hand, the government has conferred on the taluqdars and on their heirs for ever the full proprietary right in their respective estate, subject only to the payment of the annual revenue that may be imposed from time to time, and to certain conditions of loyalty and good service, on the other hand, all persons holding an interest in the land under the taluqdars will be secured in the possession of the subordinate rights which they have heretofore enjoyed.

4. The meaning of this is that, when a regular settlement of the province is made, wherever it is found that zamindars or other person have held an interest in the soil intermediate between the raiyat and the taluqdar, the amount or proportion payable by the intermediate holder to the taluqdar, and the net Jama finally payable by the taluqdar, to the Government, will be fixed and recorded after careful detailed survey and inquiry into each case, and will remain unchanged during the currency of the settlement, the taluqdar being, of course, free to improve his income and the value of his property by the reclamation of waste-lands (unless in cases where usage has given the liberty of reclamation to the zamindar), and by other measures of which he will receive the full benefit at the end of the settlement. Where leases (pattas) are given to the subordinate zamindars, they will be given by the taluqdar, not by the Government.

5. This being the position in which the Taluqdars will be placed, they cannot, with any show of reason, complain if the Government takes effectual steps to re-establish and maintain in subordination to them the former rights, as those existed in 1855, of other persons whose connexion with the soil is in many cases more intimate and more ancient than theirs; and it is obvious that the only effectual protection which the government can ex-

tend to this inferior holders, is to define and record their rights, and to limit the demand of the taluqdar as against such person during the currency of the settlement to the amount fixed by the government as the basis of its own revenue-demand.

6. What the duration of the settlement shall be, and what proportion of the rent shall be allowed in each case to zamindars and taluqdars, are questions to be determined at the time of settlement.

The Governor-General agrees in your observation that it is a bad principle to create two classes of recognized proprietors in one estate, and it is likely to lead to the alienation of a larger proportion of the land-revenue than if there were only one such class. But whilst the taluqdari tenure, notwithstanding this drawback, is about to be recognized and re-established, because it is consonant with the feelings and traditions of the whole people of Oudh, the zamindari tenure, intermediate between the tenures of the taluqdar and the raiyat is not a new creation, and it is a tenure, which in the opinion of the Governor-General, must be protected.

SECOND SCHEDULE.

(See section 4.)

- (1.) Dig-Bijay Singh, Raja of Balarampur.
- (2.) Rao Hardeo Bakhsh Singh, of Katiari.
- (3.) Kashi Parshad, Taluqdar of Sissendi.
- (4.) Jhabba Singh, Zamindar of Goral Khera.
- (5.) Chandan Lal Zamindar of Moraon (Baiswara).

ACT NO. IV. OF 1869.*

RECEIVED THE G. G.'s ASSENT ON THE
26th FEBRUARY 1869,

*An Act to amend the law relating to Divorce and
Matrimonial Causes in India.*

WHEREAS it is expedient to amend the law relating to the
divorce of persons professing the Christian
religion, and to confer upon certain Courts
jurisdiction in matters matrimonial; It is hereby enacted as
follows :—

Preamble.

I.—Preliminary.

Short title.

Commencement of Act.

1. This Act may be called "The Indian
Divorce Act," and shall come into operation
on the first day of April 1869.

2 This Act shall

Extent of Act.

extend to the whole of British India, and
(so far only as regards British subjects wi-
thin the dominions hereinafter mentioned)
to the dominions of Princes and States in India in alliance with
Her Majesty.

Nothing hereinafter contained shall authorize any Court to
grant any relief under this Act, except in
cases where the petitioner professes the
Christian religion, and resides in India
at the time of presenting the petition.

Extent of power to grant
relief generally.

* Act IV. of 1869 extends to India the principal provisions of 20 & 21 Vict., c. 85, as amended by 22 and 23 Vict., c. 61, 23 & 24 Vict., c. 144, and 29 and 30 Vict., c. 32. It also embodies many rulings of Sir Cresswell Cresswell and Lord Penzance.

It has been declared in force in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4; and Reg III of 1913 s. 3 in the Santhal Parganas by Reg (III of 1872), s. 3, as amended by Reg (III of 1899) s. 3; in Angul and the Khondmals by Reg (I. of 1894), s. 3; in the Arakan Hill District (except so much of sections 47 and 49 as relates to stamps) by Reg (IX. of 1874, s. 3; and in British Baluchistan by Reg, (I. of 1890) s. 3, and Reg 2. of 1913 s. 3.

The Act has been declared, under the Scheduled District Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

the Districts of Hazaribagh, Lohardaga (including the present District of Palamau), and Manbhum and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum—See *Gazette of India*, 1881 Pt. I, p. 504;

the Scheduled Districts in Ganjam and Vizagapatam—See *Fort St. George Gazette*, 1898, Pt. I., p. 666.

It has been extended, under the same Act, to the North-Western Provinces Tarai,—See *Gazette of India*, 1876, Pt. I., p. 505.

The Limitation Act does not apply to suits under this Act—See Act XV. of 1877, s. 1.

or make decrees of dissolution of marriage except in the following cases : (a) where the marriage shall have been solemnized in India ; or (b) where the adultery, rape, or unnatural crime complained of shall have been committed in India ; or (c) where the husband has, since the solemnization of the marriage, exchanged his profession of some other from of religion ;

and to makes decrees of dissolution,

and nullity,

or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in india.

NOTES.

Extent of Act—This section extends the provisions of this Act to European British subjects residing in a native state 10B. 423

Christian religion—The Court has no jurisdiction to grant a decree against a respondent who is not a Christian. 15 Bom. L. R. 593. This Act is applicable to such marriages as are recognised as marriages by Christians and not to polygamous contracts, such as the unions known as marriages to the Mahomedan law. 2 N. W. P. 370. But a previously contracted non-Christian marriage may be dissolved under this Act 18 C. 252. But this Act is not applicable to cases where the grounds of divorce is adultery before conversion 14 M. 382.

Resides—The words "reside" is capable of a variety of meaning according to the circumstances to which it is applicable and the context to which it is found. Each case must be decided by reference to its own circumstances. The 'residence' to which this Act points must be something more than occupation during occasional casual visits within the local limits of the Court, more especially where there is residence outside those limits marked with a considerable measure of continuance—3 C. W. N. 250 Under certain circumstances living for greater portion of a month is sufficient residence within the meaning of this Act—45 B. 547. But in all cases the Court ought to enquire into, and set out in his judgment the facts relied on as giving jurisdiction to it, 14 W-R 416 ; 32 A 203 ; 31 C. L. J. 340. The question of domicile has no effect on the question of jurisdiction. P. R. 64 of 1900. But where the husband has a foreign domicile, a decree in a divorce suit made by the Court other than that of his domicile, even if it is a divorce made in accordance with the Municipal law, will have no effect outside the territory in which the Court granting the decree is sitting. 40 C-215=17 C. W. N. 411. See also Lolley's case 1 Russ and Ry. 287 ; *Genway v. Benly* 3 Hugg. 639 ; *Dolphin v. Robins* 7 H. L. C-390 ; *Pitt v. Pitt* 4 Macq. 627 ; *Shaw v. Attorney General* L. R. 2 P. d. D. 156. The existing English Law on the subject was summarised by the Judge Ordinary Lord Penzance in *Shaw v. Attorney-General* (L. R. 2 P. d. D. 156, 161.) "First" he says "Lolly's case has never been over ruled. Secondly, in no case has a foreign divorce been held to invalidate an English marriage between English subjects where the parties were not domiciled in the country by whose tribunals the divorce was granted. Whether, if so domiciled, the English Courts would recognise and act upon such a divorce, appears to be question not wholly free from doubt, but the better opinion seems to be that they would do so if the divorce be for a ground of divorce recognised as such in their country, and the foreign country be not resorted to for the collusive purpose of calling in the aid of its tribunals." So it is not competent to a British Indian Court to decree dissolution of marriage when the parties are not domiciled in India though the marriage was celebrated in India and the matrimonial offence was committed in British India : (1921) P. 204.

Adultery committed in India.—Whatever the place of marriage may be, the District Court has, under this section jurisdiction to pass a decree for dissolution of marriage when adultery, the ground for dissolution has been committed in India, (20 B. 392).

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

(1) "High Court" means, in any Regulation province—the Court there established under the Act of the twenty-fourth and twenty-fifth of Victoria chapter one hundred and four.

in the territories for the time being subject to the government of the Lieutenant-Governor of the Punjab—the "High court of Judicature at Lahore"§

in Burma—"The Chief Court of Lower Burma,"*

and in any other Non-Regulation Province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty.

In the case of any petition under this Act, "High Court" is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together :

(2)† "District Judge" means, in the Regulation Provinces—a Judge of a principal Civil Court of original jurisdiction ;

in the Non-Regulation Provinces, other than Sindh and "Burma"—a Commissioner of a Division :*

in Sindh—the Judicial Commissioner of that Province ‡

"Burma—a Judge of a Divisional Court ;"

and in any place in the dominions of the Princes and States aforesaid—such officer as the Governor-General of India in Council shall from time to time appoint in this behalf by notification in the *Gazette of India*, and, in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act :

* The word or words under quotations has or have been substituted by Act VI, of 1900. s. 47, and Sch. I.

† So much of s. 3, cl. (2) of this Act as defines " District Judge" to mean in the Central Provinces a Commissioner of a Division is repealed by Act (IV. of 1901), s. 8.

‡ This clause has been substituted by Act XII. of 1891, s 97), Sch. II.

§ Words within quotations have been added by Act 18 of 1912."

(3) "District Court" means in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together :

(4) "Court" means the High Court or the District Court, as the case may be :

(5) "Minor children" means, in the case of sons of native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of native fathers, girls who have not completed the age of thirteen years : In other cases it means unmarried children who have not completed the age of eighteen years :

(6) "Incestuous adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity :

(7) "Bigamy with adultery" means adultery with the same woman with whom the bigamy was committed :

(8) "Marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere :

(9) "Desertion" implies an abandonment against the wish of the person charging it : and

(10) "Property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix, or administratrix ; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

NOTES.

Reside or last resided together.—As used in this section the word reside implies dwelling either of a permanent nature or for some considerable time. (L. B. R. 1990—1902 vol I, 222) where the husband and wife had no permanent residence, the petition could be entertained by the court having jurisdiction at the place where they "last resided together" though for a short period, 36 C. 964. The word together must be read with "last resided" only ; 22 Bom. L. R. 361 ; 171 P. R. 1911. See also 45 B. 547 ; 22 Bom. L. B. 1077 ; 76 P. R. 1916 ; 20 Ind. Cas. 399 ; 77 P. R. 1906, 14 W. R. 416 ; 1892 P. J. 153. If both parties are resident within the jurisdiction of the court at the time of the presentation of the petition the court has jurisdiction. 22 Bom. c. R. 361.

High Court.—The High Court has jurisdiction where the parties are resident and adultery is committed in 24 Perganas. 3 B. L. R. 67.

District Judge.—The Political Resident of Aden is not a District Judge as defined in this section. 14 Bom. L. R. 672. As regards the jurisdiction of High Courts in a suit for divorce arising between European British subjects

resident in Native state vide 10 B. 422. A decree dismissing a suit for dissolution of marriage made by the Judicial Commission of Oudh exercising the powers of a District Judge is appealable to the High Court for the N. W. P. 4 A. 306.

Cost of appeal by wife—In a suit for divorce, a wife though unsuccessful, is entitled to the costs of an appeal if it is not unreasonably preferred, 4 C. 260 = 3 C L R 484.

II.—Jurisdiction.

4 The jurisdiction now exercised by the High Courts in respect of divorce *a mensa et toro*, and in all other causes, suits, and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained and not otherwise, except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

Matrimonial jurisdiction of High Courts to be exercised subject to Act.

Exception.

NOTES.

Scope—This section which provides that the Jurisdiction in matters matrimonial shall be exercised according to the provisions of this Act and not otherwise, does not preclude the court from considering whether a marriage was duly solemnized under the provisions of the Christian Marriage Act, and the court can make a decree, declaring a marriage null and void on grounds other than those contained in S-18 of this Act—47 Ind Cas, 544, But see *contra* 13 B. L. R 112.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras, or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

6. All suits and proceedings in causes and matters matrimonial, which, when this Act comes into operation, are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are, as nearly as may be, conformable to the principles and

Court to act on principles of English Divorce Court.

Pending suits.

rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.*

"Provided that nothing in this section shall deprive the said courts of jurisdiction in a case where the parties to a marriage professed the christian religion at the time of the occurrence of the facts on which the claim to relief is founded."*

NOTES.

Scope.—This section is applicable not only to the grant of relief but also to question of procedure. 55 Ind. cas. 269.

Principles and rules—refer to rules of *quasi*, substantive rather than mere adjective law. 23 Ind Cas. 212 ; 22 B. 612 ;

Evidence—The charge of cruelty and the marriage of the parties can be proved by the production of a previous decree for judicial separation and by showing the identity of the parties—22 C. 544. In a case of divorce, if there is no evidence as to the law of the parties, or domicile, the court will act and grant relief on the general principles of English law ; 29 C. 619.

Proviso.—The rulings in 17 M. 235 and 8 Bom L R 856 are of no effect in view of the addition of the proviso.

8. The High Court may, whenever it thinks fit, remove and try
 Extraordinary jurisdiction of High Court. and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.
 Power to transfer suits.

9. When any question of law, or usage having the force of
 Reference to High Court. law, arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case, and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

* The words within quotations have been added by Act XII of 1912,

III.—Dissolution of Marriage.

10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When husband may petition for dissolution.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved, on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman ;

When wife may petition for dissolution.

or has been guilty of incestuous adultery.

or of bigamy with adultery.

or of marriage with another woman with adultery.

or of rape, sodomy, or bestiality.

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years and upwards.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Contents of petition.

NOTES.

Change of religion—by a husband and his subsequent marriage is ground for divorce. 14 Ind Cas. 192.

Adultery—The court may presume adultery when it is satisfied that a guilty attachment subsisted between the parties, and that opportunity occurred when a guilty intercourse might with ordinary facilities have taken place 62 Ind Cas. 782. Adultery alone is not a sufficient ground for a wife to frame a petition for asking for a dissolution of marriage. The adultery must be coupled with one of the other reasons given in this section. 8 Ind Cas. 1186 (F.B.)

Sodomy—Carnal knowledge against the order of nature by a man with a woman was held to be sodomy within the meaning of this section 68 P. R. 1882.

Adultery and cruelty—Adultery and cruelty after Judicial separation is also good ground for a decree for dissolution. 11 Bur L T. 227; 45 Ind. Cas. 914. The cruelty must be such as endangers life, limb or health, bodily or mental or reasonable apprehension of it. 36 Ind. Cas. 381. Repeated acts of cruelty may also amount to cruelty under this section 36 Ind Cas. 982. Communicating contagious and loathsome disease amounts to cruelty. 14 Bur L R 173.

Desertion—Desertion must be against the will of the wife. 8 L. B. R. 100 (F B). Before the two years' period of desertion is over, a petition for divorce would be premature and without a cause of action. 21 Ind Cas. 230.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:—

Adulterer to be co-respondent.

- (1).—That the respondent is leading the life of a prostitute and that the petitioner knows of no person with whom the adultery has been committed ;
- (2).—That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it ;
- (3).—That the alleged adulterer is dead.

NOTES.

Prostitute—The addition of co-respondent is not necessary if the wife has been leading the life of a prostitute. 3 B LR. Ap 9.

Adulterer—A person who has been charged by the husband in his answer to a petition by the wife for divorce with having committed adultery with the wife is entitled to intervene 4 C W N. 506. But the alleged adulteress cannot be made a party to a suit by a wife for divorce against the husband on the ground of incestuous adultery. 30 C 489 ; 30 C 490 N.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

Court to be satisfied of absence of collusion.

NOTES.

Duties of Court—of the Court in the investigation of a suit for divorce are that upon any petition for a dissolution of marriage, being presented, the Court shall satisfy itself so far as it reasonably can not only as to the facts alleged but also whether or not the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same ; and shall enquire into any counter charges which may be made against the petitioner. 31 A 511. Although the refusal of the relief on the ground of the petitioner's adultery is discretionary under this section yet the discretion must be exercised on principles and rules on which the divorce court in England grants relief. 2 Bom. L. R 690 See also L. B. R. (1903-1904) Vol II 67 ; P. R. 62 of 1887 ; 130 P. R. 1879.

Counter charges—A letter written by the respondent to the Judge imputing misconduct to the petitioner will not constitute 'counter charges' within the meaning of this section. 62 P. R. 1887.

Condonation—Mere forgiveness is not condonation, to be condonation it must completely restore the offending party and must be followed by cohabitation. 31 C. L. J 435=47C. 1068 ; 44C. 1091.

13. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case
Dismissal of petition. has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

Power to Court to pronounce decree for dissolving marriage. **14.** In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal conhabitation has been resumed or continued.

Condonation.

NOTES

Collusion—implies an agreement or understanding between the parties; in other words, collusion is held to exist where the initiation of the proceeding for dissolution of marriage is procured or its conduct provided for by agreement or bargain between the spouses or their agents. 11 C. 1091. In the absence of collusion uncorroborated confession of adultery by a respondent may be accepted as evidence. 49 Ind. Cas. 305. See also. 11 C. 651.

Adultery of petitioner is a good ground of refusal to the granting of decree nisi. 18 Bom. L. R 818 ; 2 Bom. L. R 690 ; A. W. N. 1883, 73.

Condonation—Condonation is a conclusion of fact and not of law and means complete forgiveness and blotting out of a conjugal offence followed by cohabitation, the whole being done with full knowledge of all the circumstances of the particular offence forgiven. 21 C. W. N. 717 ; 31 C. L. J. 435.

Solemnization of marriage—In a divorce case before a final decree is made the court must come to a distinct finding upon the question whether the marriage was solemnized in India and upon what date. 31 C. L. J. 340.

Delay—in instituting a suit shows that the petitioner either connived at the adultery or was wholly indifferent to it. 3 C. 688 See also A. W. N. 1887, 272; See also 12 C. W. N. 1009.

Husband's neglect conducing adultery—is a complete answer to a suit for dissolution of marriage by the husband. 5 A 71 ; A. W. N. 1887, 272; 22 M 328.

Cruelty—The cruelty must be specifically pleaded. 3 B. L. R. App 6. It is in the discretion of the Court to refuse a decree for divorce if the petitioner has been guilty of cruelty even though the cruelty may have been condoned—3 B. L. R. O. C. 136.

Discretion.—to be exercised under this section must be a regulated discretion. 8 B. H. C. R O C. 48.

Res judicata.—Refusal of divorce in a former proceeding is no bar to a subsequent one. 6 P. R. 1898. See also 45 P. R. 1871.

15. In any suit instituted for dissolution of marriage if the respondent opposes the relief sought on the ground in case of such a suit instituted by a husband of his adultery, cruelty, or desertion without reasonable excuse, or in case of such a suit instituted by a wife on the ground of her adultery and cruelty the Court may in such suit give to the respondent on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

Relief in case of opposition on certain grounds.

16. Every decree for a dissolution of marriage made by a High Court not being a confirmation of a decree of a District Court shall, in the first instance be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

Decrees for dissolution to be *nisi* Collusion. During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

NOTES.

Service on respondent.—A decree *nisi* need not be served on the respondent 8 Q. 756. Notice of the application is only intended that any party other than the parties to the suit should come in to show cause. 4 B. L. R. O. C 52, 6 B. 418, 17 C. 570.

Arrears of alimony.—must be paid to the wife before order can be passed making the decree *nisi* absolute. 4 A. 295.

Decree nisi.—under this section a decree *nisi* can be pronounced only by a High Court. 43 Ind. Cas, 519

Confirmation of decree for dissolution by District Judge. **17.** Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the Senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit :

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed ; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

NOTES.

Scope—Section 20 of the divorce Act does not make the proviso in S. 17 applicable to the confirmation by the High Court of a decree of nullity of marriage by a District Judge. 22 A. 270 F. B. For enabling the High Court to take action under this section, an application for confirmation of a decree for dissolution of marriage is not necessary. 29 M. L. J 268 (F. B) But see 31 A. 511 But a decree for dissolution of marriage cannot be passed without enquiry into, and evidence to prove the facts alleged by the petitioner. The procedure in matrimonial suits under this Act differs in some respects from the procedure in other suits. L. B. R. (1903-1904) Vol II, 67. There is nothing in this Act which justifies a distinction between the two sections (16 and 17) with reference to the power of the Court to rescind the decree made in the first instance, when the parties have resumed the relations of husband and wife since that decree was passed and before it has been confirmed or made absolute. 8 Ind. Cas. 684 ; 10 A. 559, No notice to the respondent is necessary. 59 Ind. Cas. 89.

Execution for costs—A decree nisi for cost cannot be executed before its confirmation. 45 P. R. 1897. Application for alimony should be made in the original Court.—17 Bom. L. R 948.

IV.—Nullity of Marriage.

18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void,

Grounds of decree.

19. Such decree may be made on any of the following grounds :—

(1).—That the respondent was impotent at the time of the marriage and at the time of the institution of the suit ;

- (2).—That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- (3).—That either party was a lunatic or idiot at the time of marriage;
- (4).—That the former husband or wife of either party was living at the time of the marriage and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

NOTES.

Impotence—means physical unfitness for consummation 29 M L J. 183 (F.B).

Prohibited degrees—The prohibited degrees for marriage were not the degrees prohibited by the law of England, but those prohibited by the customary law of the class to which the parties belonged. 12 C. 706 (F B).

Fraud—Concealment of a loathsome and incurable form of syphilis is recognised as a fraud. 48 C. 283=33 C L. J 97 ; 24 C. W. N. 914.

20. Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court and the provisions of section 17 clauses 1, 2, 3 and 4 shall *mutatis mutandis* apply to such decrees.

Confirmation of district Judge's decree.

NOTE.

Confirmation—Provision of Section 17 is not wholly applicable. The High Court can confirm even before the expiry of six months. 23A 270 (F. B.)

Marriage with an idiot—is invalid 8 Bom. L R 982.

21. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children to the estate of the parent who at the time of the marriage was competent to contract.

Children of annulled marriage.

V.—Judicial Separation.

22. No decree shall hereafter be made for a divorce *a mensa et toro* but the husband or wife may obtain a decree of judicial separation, on the ground of adultery or cruelty, or desertion without reasonable excuse for two years or up-

Bar to decree for divorce *a mensa et toro* ; but judicial separation obtainable by husband or wife

wards and such decree shall have the effect of a divorce *a mensã et toro* under the existing law and such other legal effect as herein-after mentioned.

NOTE.

Desertion by wife—without reasonable cause is no bar to a suit brought by her for judicial separation. 26 A 553=I.A. L. J 321.

23. Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the District Court or the High Court; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

NOTE

Clean hand—A party claiming for judicial separation must come to court with a clean hand. 8 A. L J 318 (F. B).

24. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead.

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

25. In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act, or costs entered into done, omitted, or incurred by her during the separation.

Provided that, where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessities supplied for her use;

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

26- Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegation of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection-orders.

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply, may when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

29. The husband or any creditor of, or person claiming under, him may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

30. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

31. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

VII.—Restitution of Conjugal Rights.

32. When either the husband or the wife has without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal right ; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

NOTE.

Legal cruelty.—Every act, of personal violence or every combination of such acts, voluntarily inflicted and productive of part or alarm will not constitute legal cruelty on the part of the husband. 101 P. R. 1882.

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

VIII.—Damages and Costs.

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim

damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with such service, or directs some other service to be substituted,

The damages to be recovered on any such petition shall be ascertained by the said Court,* although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

35. Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings :

Power to order adulterer to pay costs.

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

(1) If the respondent was, at the time of the adultery, living apart from her husband, and leading the life of a prostitute, or.

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Whenever any application is made under section 17, the Court, if it thinks fit that the applicant had no grounds or no sufficient grounds for intervening may order him to pay the whole or any part of the costs occasioned by the application.

Power to order litigious intervenor to pay costs

NOTES.

Cost.—Adultery committed by one co-respondent, condoned by the husband, is revived by subsequent adultery with another co-respondent. In such a case, a decree *nisi* will be passed against both co-respondents. Cost will be given only against the co-respondent with whom the subsequent adultery was committed. 28C. 221.

Cost of a wife in a divorce suit should be paid by the husband 5 B.L. R. Ap. 9, 9 M. 12 ; 3 B. L. R. Ap. 5; 30 C. 631=7 C. W. N. 565 ; 14 C. 580 ; 19 B. 293 ; 23 C. 913 ; 23 C. 916 N ; 25 C. 222=2 C. W. N. 37 ; 9 B. L. R. Ap. 6 ; 5C. 357 ; 29 C. 619.

IX.—Alimony.

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Alimony Pendente Lite.

* *Kelly v. Kelly*, 3 Ben. O. C. J. 67.

Such petition shall be served on the husband ; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just :*

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

NOTES.

Period for payment of alimony—In India the period during which alimony is payable is regulated by this section, which provides that it shall continue, in the case of a decree for dissolution of marriage until the decree is made absolute 36C. 1018; 49 Ind. Cas. 209.

Amount of alimony—This section provides that such alimony shall not exceed one-fifth of the husband's net income. 'Net income' has its ordinary meaning—the amount of income minus deductions on account of income-tax, charges for pension fund and the like. Expenses of maintaining children and liquidation of debts may be taken into consideration in allotting the alimony. 14M. 88, See also 6 C. W. N. 414 ; 26C. 264 ; 11 Ind. Cas. 813 ; while the wife is living with the co-respondent no alimony should be granted. 3 B.L.R. Ap. 13.

After a decree *nisi* in a suit has been passed alimony *pendente lite* cannot be granted. 11C. 354 but see 23C. 913.

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,†

Power to order permanent alimony.

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable ‡ and for that purpose may cause a proper instrument to be executed by all necessary parties.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable :

Power to order monthly or weekly payment

* *Gordon v. Gordon*, *ibid.* 13.

† *Kelly v. Kelly*, 5 Ben. 71, 74.

‡ *Ord. v. Ord*, 5 Ben. App. 24.

Provided that, if the husband afterwards from any cause becomes unable to make such payments it shall be lawful for the Court to discharge or modify the order or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid and again to revive the same order wholly or in part as to the Court seems fit.

NOTES.

Scope.—This section limits the power of court to make an order for permanent alimony to cases in which a decree has been made declaring a marriage to be dissolved or where a decree for judicial separation has been obtained by the wife. The section omits to give such power to the court where the decree declares the marriage null and void 48 C. 636.

Application when to be made.—Application for permanent alimony must be made either at the same time as or at a reasonable time after the confirmation of any decree declaring the marriage to be dissolved 44 M. 987.

Discretionary.—The power conferred under this section is discretionary, 38 A. 638. The court has power under this section to order payment of a lump sum absolutely to the wife by way of permanent alimony, 39 B. 182. Principle on which the court will grant alimony is pointed out in Ord v. Ord. 5 B. L. R. App. 34; see also 5 B. L. R. 71.

District Judge.—cannot order permanent alimony before his decree in the suit is confirmed 13 P. R. 1891.

38. In all cases in which the Court makes any decree or order for alimony it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the court, and may impose any terms or restrictions which to the Court seem expedient and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

X.—Settlements.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof,

The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Inquiry into existence of ante-nuptial or post-nuptial settlements.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit :

Provided that the Court shall not make any order for the benefit of the parents, or either of them at the expense of the children,

NOTE.

Vide 14 B. L. R. Ap. 6,

41. In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

Power to make orders as to custody of children in suit for separation.

NOTE.

Custody of children.—The Court has wide discretion regarding custody of children 69 P. R. 1870 see also 6 B. L. R. 318 ; 5 B. L. R. 71 ; 70 P. R. 1878.

42. The Court, after a decree of judicial separation, may, upon application (by petition) for this purpose, make from time to time, all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the Court, as might have been made by such decree or by interim-orders in case the proceeding for obtaining such decree were still pending,

Power to make such orders after decree.

NOTE.

Custody of children.—No formal prayer need be made in the original petition for judicial separation—18 C. 473.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim-orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim-orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the suit ;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

NOTE.

A decree *nisi* for the dissolution of a marriage made by a District Judge should not contain orders as to the custody and maintenance of the children. Such orders are in any case only *interim*, which terminate upon the confirmation of the decree by the High Court. 142 P. R. 1919.

44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim-orders as aforesaid,

XII.—Procedure.

45. Subject to the provisions herein contained all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.*

Code of Civil Procedure
to apply.
Procedure.*

NOTE.

Vide 4 B. L. R. O. C. 51.

46. The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Forms of petitions and
statements.

47. Every petition† under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation,‡ shall‡ state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Stamp on petition.
Petition to state absence
of collusion.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of complaints, and at the hearing be referred to as evidence.

Statements to be verified.

48. When the husband or wife is a lunatic or idiot any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by committee or other person entitled to his or her custody.

Suits on behalf of lunatics.

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Suits by minors.

Such undertakings§ shall be filed in Court and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

* See Act V of 1908.

† For Court-fee, see now Act VII of 1870, Sch. II, No. 20.

‡ Certain words, which were repealed by Act VII of 1870, have been omitted.

§ Certain words, which were repealed by Act VII of 1870, have been omitted. For Court-fee, see now No. 7 of Sch. II, of that Act.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs:

Service of petition.

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

NOTES.

When the service on the corespondent is dispensed with the Court should assign reasons for it. 1896 P.J. 221

It is essential, in suits for dissolution of marriage, that petition of the plaintiff should be personally served under this section on the respondent or that sufficient notice of its contents should be given to him. 12C.W.N. 1009.

51. The witnesses in all proceedings before the Court where their attendance can be had, shall be examined orally and any party may offer himself or herself as a witness and shall be examined, and may be cross-examined and re-examined like any other witness:

Mode of taking evidence.

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party or by direction of the Court be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

NOTE.

Vide 58P.R. 1870; 4A49; P.R. 11 of 1902.

52. On any petition presented by a wife praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty or of adultery coupled with desertion without reasonable excuse the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Competence of husband and wife to give evidence as to cruelty or desertion.

NOTE.

Vide 3 B. L. R. App. 6.

53. The whole or any part of any proceeding under this Act may be heard if the Court thinks fit with closed doors.

Power to close doors.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon it sees fit so to do.

Power to adjourn.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed* from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules, and orders for the time being in force ;

Enforcement of and appeals from orders and decrees.

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage : nor from the order of the High Court confirming or refusing to confirm such decree :

No appeal as to costs.

Provided also that there shall be no appeal on the subject of costs only.

NOTES.

Appeal—No appeal lies from decree refusing to allow dissolution of marriage passed by District Judge in Upper Burma. 19 Ind. Cas. 53 (F.B.)

Appeal from decree absolute—is competent even though no appeal has been preferred against decree *nisi* 22B. 612.

Limitation—Vide 22 B. 612; 6B. 487.

Additional evidence in the appellate Court is allowed 4A. 306.

See also 5B.L.R. 71; 20B. 362; 84 P.L.R. 1904; 56P.R. 1904; 18P.R. 1903; 10A. 375.

56. Any person may appeal to her Majesty in council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

Appeal to Queen in Council.

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—*Re-marriage.*

57 When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

Liberty to parties to marry again.

* For Court-fee on memorandum of appeal, see Act VII. of 1870, Sch. II., No. 20.

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death :

Provided that no appeal to Her Majesty in council has been presented against any such order or decree.

When such appeal has been dismissed, or when, in the result thereof, the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

NOTE.

The marriage of a woman with the petitioner during the life time of her former husband and within six months of the confirmation by the High Court of a decree of the District Judge dissolving her marriage with the former husband, is opposed to the terms of this section and must therefore be declared null and void under section 18—19 Ind. Cas. 778; 48C. 636; 2A.L.J. 420 (F.B.); 38M. 452; 34A. 202.

58. No clergyman in Holy Orders of the* Church of England(* shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person.

English clergyman not compelled to solemnize marriages of persons divorced for adultery.

59. When any minister of any church or chapel of the said* Church refuses to perform such marriage-service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said Church, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage-service in such church or chapel.

English minister refusing to perform ceremony to permit use of his church.

* Certain words, which were repealed by Act XII. of 1873, have been omitted.

XIV.—Miscellaneous.

Decree for separation or protection-order valid as to persons dealing with wife before reversal.

60. Every decree for judicial separation or order to protect property, obtained by a wife under this Act, shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge, or variation thereof.

All person who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same, shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

61. After this Act comes into operation, no person competent to present a petition under section 2 and 10 shall maintain a suit for criminal conversation with his wife.

Bar of suit for criminal conversation.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same.

Power to make rules

Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure.*

All such rules, alterations, and additions shall be published in the local official Gazette.

* See Act V. of 1908.

SCHEDULE OF FORMS.

No. 1.—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CORRESPONDENT. BY REASON OF ADULTERY.

(See sections 10 and 34.)

In the (High) Court of [or To the Judge of].
 To the Hon'ble Mr. Justice The day of 18.
 The petition of A B of

SHOWETH.

1. That your petitioner was, on the day of one thousand eight hundred and lawfully married to C B, spinster, at .*

2. That, from his said marriage, your petitioner lived and cohabited with his said wife at and at in , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *thirteen* years.

3. That during the *three* years immediately preceding the day of one thousand eight hundred and , X Y was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that, on divers occasions during the said period, the dates of which are unknown to your petitioner, the said C B in your petitioner's said house committed adultery with the said X Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X Y do pay the sum of Rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

(Signed) A B,†

Form of Verification.

1, A B, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

No. 2.—RESPONDENT'S STATEMENT IN ANSWER TO No. 1.

In the Court of the day of Between AB, petitioner,
 C B, respondent, and
 X Y, co-respondent.

C B, the respondent, by D E, her attorney [or vakil], in answer to the petition of A B, says that she denies that she has on divers or any occasions committed adultery with X Y, as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the the said petition.

(Signed) C B.*

* If the marriage was solemnized out of India. the adultery must be shown to have been committed in India.

† The petition must be signed by the petitioner.

No. 3.—CO-RESPONDENT'S STATEMENT IN ANSWER TO No. 1.

In the (High) Court of

The day of

Between *A B*, petitioner*C B*, respondent, and*X Y*, co-respondent.

X Y, the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said *C B* as alleged in the said petition.

Wherefore the said *X Y* prays that this (Hon'ble) Court will reject the prayer of the said petitioner, and order him to pay the costs of and incident to the said petition.

(Signed) *X Y*.

No. 4.—PETITION FOR DECREE OF NULLITY OF MARRIAGE.

(See section 18.)

In the (High) Court of

To the Hon'ble Mr. Justice

[or to the Judge of]

The day of 18 .

The petition of *A B*, falsely called *A D*.

SHOWETH.

1. That on the day of , one thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to *C D*, then a bachelor of about thirty years of age, at [some place in India].

2. That from the day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C D*, at divers places and particularly at , aforesaid.

3. That the said *C D* has never consummated the said pretended marriage by carnal copulation.

4. That, at the time of the celebration of your petitioner's said pretended marriage, the said *C D* was, by reason of his impotency or malformation legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and said *C D* with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) *A. B.*

From of verification : See No 1.

No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF HER HUSBAND'S ADULTERY.

(See section 22.)

In the (High) Court of

To the Hon'ble Mr. Justice

[or To the Judge of]

The day of 186 .

The petition of *C B*, of, the wife of *A B*.

SHOWETH,

1. That on the day of , one thousand eight hundred and sixty , your petitioner then *C D*. was lawfully married to *A B* at the church of , in the

2. That, after her said marriage your petitioner cohabited with the said *A B* at and at , and that your petitioner and her said husband have issue living of their said marriage *three* children to wit, &c., &c.*

3. That, on divers occasions in or about the months of *August, September* and *October*, one thousand eight hundred and *sixty* , the said *A B* at aforesaid committed adultery with *E F* who was then living in the service of *A B* and your petitioner at their said residence aforesaid.

4. That, on divers occasion in the months of *October, November* and *December* one thousand eight hundred and *sixty* , the said *A B* at aforesaid committed adultery with *G H*, who was then living in the service of the said *A B* and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A B* with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C B*.†

Form of verification: see No. 1.

No. 6.—STATEMENT IN ANSWER TO No. 5.

In the (High) Court of

B against *B*
The day of

The respondent, *A B*, by *W Y*, his attorney [*or vakil*] saith,

1. That he denies that he committed adultery with *E F*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E F* if any.

3. That he denies that he committed adultery with *G H*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G H*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A B*.

No.—7 STATEMENT IN REPLY TO No.6

In the (High) Court of

B against *B*
The day of

The petitioner, *C B*, by her attorney [*or vakil*], says—

1. That she denies that she condoned the said adultery of the respondent with *E F*, as in the second paragraph of the statement in answer alleged.

* State the respective ages of the children.

† The petition must be signed by the petitioner

2. That, even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G H*, as set forth in the fourth paragraph of the petition.

(Signed) *C B*.

NO. 8.—PETITION FOR A JUDICIAL SEPARATION BY REASON OF CRUELTY.

(See section 22.)

In the (High) Court of

To the Hon'ble Mr. Justice

or To the Judge of

].

The day of

186.

The petition of *A B* (wife of *C B*) of

SHEWETH,

1. That, on the day of , one thousand eight hundred and , your petitioner then *A D*, spinster was lawfully married to *C B* at

2. That, from her said marriage, your petitioner lived and cohabited with her said husband, at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as herein. after more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That, from and shortly after your petitioner's said marriage, the said *C B* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That on an evening in or about the month of one thousand eight hundred and , the said *C B*, in the highway and opposite to the house in which your petitioner and the said *C B* were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *F D*, your petitioner's brother.

5. That subsequently, on the same evening, the said *C B*, in his said house at aforesaid, struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of , one thousand eight hundred and , the said *C B*, in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your petitioner, by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at : that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C B*, and also order that the said *C B* do pay the costs of and incident to these proceedings.

(Signed)

A B,

Form of Verification : see No. 1,

No. 9.—STATEMENT IN ANSWER TO No. 8.

In the (High) Court of

The day of

Between *A B*, petitioner, and
C B, respondent.

C. B., the respondent, in answer to the petition filed in this cause, by *W F*, his attorney [or vakil], saith that he denies that he has been guilty of cruelty towards the said *A B*, as alleged in the said petition,

(Signed) *C B*,

No. 10.—PETITION FOR REVERSAL OF DECREE OF SEPARATION.

(See section 24.)

In the (High) Court of

To the Hon'ble Mr. Justice

[or To the Judge of]

The day of 186

The petition of *A B*, of .

SHEWETH,

1. That your petitioner was, on the day of , lawfully married to .
2. That on the day of , this (Hon'ble) Court, at the petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

[Here set out the decree.]

3. That such decree was obtained in the absence of your petitioner, who was then residing at .

[State facts tending to show that the petitioner did not know of the proceedings and further, that had he known might have offered a sufficient defence.]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife.

[Here state any legal grounds justifying the petitioner's separation from his wife.]

Your petitioner therefore prays that this (Hon'ble) Court will reverse the said decree.

(Signed) *A B*.

Form of verification : see No. 1.

No. 11.—PETITION FOR PROTECTION-ORDER

(See section 27.)

In the (High) Court of

To the Hon'ble Mr. Justice

[or To the Judge of

The day of 186 .
 The petition of *C B*, of ,
 the wife of *A B*.

SHEWETH,

That on the day of she was lawfully married to *A B*
 at .

That she lived and cohabited with the said *A B* for years at
 , and also at , and hath had children, issue of her said
 marriage of whom are now living with the applicant, and wholly depen-
 dent upon her earnings.

That, on or about , the said *A B*, without any reasonable cause,
 deserted the applicant, and hath ever since remained separate and apart from
 her.

That, since the desertion of her said husband, the applicant hath maintained
 herself by her own industry [or on her own property as the case may be,
 and hath thereby and otherwise acquired certain property consisting of [Here
 state generally the nature of the property.]

Wherefore she prays an order for the protection of her earnings and
 property acquired since the said day of , from the said
A B, and from all creditors and persons claiming under him.

(Signed) *C B*.

No. 12.—PETITION FOR ALIMONY PENDING THE SUIT.

(See section 36)

In the (High) Court of

B against *B*,

To the Hon'ble Mr. Justice

[or to the Judge of]

The day of 186 .

The petition of *C B*, the lawful wife of *A B*.

SHEWETH,

1. That the said *A B* has for some years carried on the business of
 , at , and from such business derives the nett annual income of from
 Rs. 4,000 to 5,000.

2. That the said *A B* is possessed of plate, furniture, linen and other
 effects at his said house aforesaid, all of which he acquired in
 right of your petitioner as his wife, or purchased with money he acquired
 through her of the value of Rs. 10,000.

3. That the said *A B* is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.*

Your petitioner therefore prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) *O B.*

Form of verification : see No. I.

No. 13.—STATEMENT IN ANSWER TO No. 12.

In the High Court of

B against B

A B of the above-named respondent, in answer to the petition for alimony, pending the suit of *CB* says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that, from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but, as I verily believe, of no larger value. And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs. 1, 500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled, under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled, under my said father's will upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business; that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that, out of my said income; I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches, and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) *A. B.*

* The petitioner should state her husband's income as accurately as possible.

No. 14.—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE FOR
RESPONDENT'S COSTS.

See section 49

In the (High) Court of

I the undersigned *A B* of _____, being the next friend of *C D*, who
is a minor, and who is desirous of a filing a petition in this Court, under
the Indian Divorce Act, against *D D* of _____, hereby undertake to
be responsible for the costs of the said *D D* in such suit, and that, if the said
C D fail to pay to the said *D D* when and in such manner as the Court shall
order all such cost as the Court shall direct him [*or her*] to pay to the said
D D, I will forthwith pay the same to the the proper officer of this Court.

Dated this day of

186 .

(Signed)

A B.

ACT XIII. OF 1869.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH MARCH 1869.

An Act further to amend the Procedure of the High Court of Judicature for the North-Western Provinces.

WHEREAS it is expedient to amend the Procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William ; It is hereby enacted as follows :—

1, 2. [*Repealed by Act X of 1875.*]

3.* Whenever any petition, application, or motion is made in any matter coming before the said Court in the exercise of its civil, criminal, or other jurisdiction, the Court shall have power to award and apportion costs in any manner it may think fit.

Power to award costs on petitions &c.

4.* Whenever the Court shall require the statement in support of any such petition, application, or motion to be verified by a declaration in writing, the person making such verification shall, if any such statement is false, and if he either knows or believes it to be false, or does not believe it to be true, be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Penalty for making false statements in support of petitions, &c.

* So much of ss. 3 and 4 as relates to criminal jurisdiction was repealed by Act X. of 1875.

ACT XIV OF 1869.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH MARCH 1869

An Act to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

WHEREAS it is expedient to consolidate and amend the law relating to the district and other subordinate Civil Courts in the Presidency of Bombay ; It is hereby enacted as follows :—

PART I:

PRELIMINARY.

1. This Act may be called "The Bombay Civil Courts' Act, 1869," and extends only to the territories (other than Sindh*) under the government of the Governor of Bombay in Council in which the Code of Civil Procedure is now in force.

Short title.
Extent.

But the Governor of Bombay in Council may, by notification in the Government Gazette, extend this Act to any other of the territories under such Government in which the said Code is not in force, or to Sindh.

2. [*Repealed by Act XIV. of 1870.*]

PART II.

DISTRICT AND SADR STATIONS.

3.* The Governor of Bombay in Council may, from time to time, by notification in the Government Gazette, alter the limits of existing zilas (which shall hereafter be called districts), and create new districts for the purposes of this Act.

Alteration and creation of districts.

4. The Governor of Bombay in Council may also, from time to time, by notification in the Government Gazette, alter the position of the sadr station in any district, and fix the position of the sadr station in any new district.

Position of sadr station

* Sections 3, 4, 12 to 20, 23, 32, 35 to 37, 40, and 43 have since been extended to the Province of Sindh by notifications under the Scheduled Districts Act (XIV. of 1874).

PART III.

DISTRICT COURTS.

5. There shall be in each district a District Court presided over by a judge to be called the District Judge. He shall be appointed by the Governor of Bombay in Council by whose authority only he shall be liable to be suspended or removed from his appointment.

District Judges.

6. The District Judge shall ordinarily hold the District Court at the sadar station in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district.

Situation of District Court.

7. The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure.

Original jurisdiction of District Court.

8. Except as provided in sections 16, 17, and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

His appellate jurisdiction.

NOTE

Vide 13 Bom. L. R. 158 ; 12 B. 675.

9. The District Judge shall have general control over all the Civil courts and their establishments within the district, and it shall be his duty to inspect or to cause one of his assistants to inspect the proceedings of all the Courts subordinate to him, and to give such directions with respect to matters not provided for by law as he may think necessary.

Control and inspection of Courts.

The District Judge shall also refer to the High Court all such matters as appear to him to require that a rule of that Court should be made thereon.

10. The District Judge shall obey all writs, orders, or processes issued to him by the High Court, and shall make such returns or reports thereto under his signature and the seal of the Court as the exigencies of the case require.

Writs and orders.

He shall further furnish such reports and returns and copies of proceedings as may be called for by the High Court or the Governor of Bombay in Council.

Reports and returns.

11. The District Judge shall use a circular seal, two inches in diameter which shall bear thereon the Royal Arms with the following inscription in English and the principle language of the district—"District Court of"

PART IV.

JOINT JUDGES

12. The Governor of Bombay in Council may,* appoint in any district a Joint Judge, who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits, and shall transact such civil business only as he may receive from the District Judge or as may have been referred to the Joint Judge by order of the High Court.*

13. All Regulations and Acts now or hereafter in force, and applying to a District Judge, shall be deemed to apply also to the Joint Judge, and the seal of the Joint Judge shall be the same as is used by the District Judge.

PART V.

ASSISTANT JUDGES.

14. The Governor of Bombay in Council, under the general control of the Governor-General of India in Council, may appoint one or more assistants to the District Judge, and may suspend or remove from his appointment any assistant so appointed.

15. An Assistant Judge shall ordinarily hold his Court at the same place as the District Judge, but he may hold his Court elsewhere within the district, whenever the District Judge shall, with the previous sanction of the High Court, direct him so to do.

16. The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to 20,000 rupees in amount or value, and miscellaneous applications not being of the nature of appeals.

* Here certain words repealed by Bom Act I of 1910 have been omitted.

The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications.

Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds 5,000 rupees.*

The Assistant Judge shall, when directed by the District Judge so to do, also take evidence on applications for certificates under* Act No. XX. of 1864 (*for making better provision for the care of the person and property of minors in the Presidency of Bombay*), and shall forward it with his opinion thereon for the final orders of the District Judge.

NOTE.

Vide 16 B. 277, 33 B. 371; 32 B. 634.

17. The Governor of Bombay in Council may, by notification in the Government Gazette, empower any Assistant Judge to try such appeals from the decrees and orders of the subordinate Courts as would lie to the District Judge, and as may be referred by him to the Assistant Judge.

Decrees and orders passed under this section by an Assistant Judge shall have the same force, and shall be subject to the same rules, as regards procedure and appeals, as decrees and orders passed by the District Judge.

NOTE.

15 B. 107.

18. A person filling the office of Assistant Judge, on whom the power of hearing appeals has once been conferred under section 17, shall continue to have this power so long and so often as he may fill the office of Assistant Judge, without reference to the district in which he may be employed provided that the Governor of Bombay in Council may, by notification in the Government Gazette, at any time withdraw such power.

19. The Governor of Bombay in Council may, by notification in the Government Gazette, invest an Assistant Judge with all or any of the powers of a District Judge within a particular part of a district, and may, by like notification, from time to time determine and alter the limits of such part.

* In s. 16, the last paragraph, as originally enacted, has been omitted, a portion of it having been repealed by Act VII of 1869, and the remaining portion by Act VIII of 1890.

The jurisdiction of an assistant Judge so invested shall, *pro tanto*, exclude jurisdiction of the District Judge from within the said limits.

Every Assistant Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the Governor of Bombay in Council, and may, with the previous sanction of the High Court, hold it at any other place within such limits.

Assistant Judge to use seal of District Judge.

20. Every Assistant Judge shall use the seal of the District Judge to whom he is assistant.

PART VI.

SUBORDINATE JUDGES.

21. There shall be in each district so many Civil Courts subordinate to the District Court as the Governor of Bombay in Council, acting under the general control of the Governor-General of India in Council, shall from time to time, direct.

22. The Judges of such subordinate Courts shall be appointed by the Governor of Bombay in Council, and shall be called Subordinate Judges.

No person shall be appointed a Subordinate Judge unless he be a subject of the Queen who has practised "three"* years as an advocate of a High Court in India or as a vakil in the High Court of Judicature in Bombay, or who has qualified for the duties of a Subordinate Judge according to such test as may for the time being be prescribed by such High court, or who has taken the degree of Bachelor of laws in the University of Bombay.

The tests so prescribed by the High Court shall be notified in the Government Gazette.

NOTE—8 Bom. L. R. 576.

22A. The Governor-General in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time, alter the local limits of the ordinary jurisdiction of the Subordinate Judges.†

23. The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may from time to time appoint within the local limits of their respective jurisdiction.

* The words within quotations have been inserted by Bom Act V of 1912.
† S. 22A has been added by Act IX. of 1880.

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall hold his Court at each of such places, and the Subordinate Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.

The same person may be the Judge of more than one subordinate Court; and in such cases the District Judge shall subject to the control of the High Court, prescribe rules for regulating the time during which the Subordinate Judge shall sit in each Court,

The Judge of any subordinate Court may, with the previous sanction of the High Court, be deputed by the District Judge to the Court of another Subordinate Judge for the purpose of assisting him in the disposal of the suits on his file :

NOTE.

Vide—1 B. 533, 12B. 155 ; 13 Bom L. R 251 ; 11 Bom L. R. 1352.

Classes of Subordinate Judges.

24. The Subordinate Judges shall be of two classes.

Jurisdiction of Subordinate Judge of first class.

The jurisdiction of a Subordinate Judge of the first class extends to all original suits and proceedings of a civil nature.

The jurisdiction of a Subordinate Judge of the second class extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value, five thousand rupees.

Jurisdiction of Subordinate Judge of second class.

25. A Subordinate Judge of the first class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature wherein the subject-matter exceeds five thousand rupees in amount or value as may arise within the local jurisdictions of the Courts in the district presided over by Subordinate Judges of the second class.

Special jurisdiction of Subordinate Judge of first class.

In districts to which more than one Subordinate Judge of the first class have been appointed, the District Judge, subject to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised.

NOTE.—8B. 31.

26. In all suits decided by a Subordinate Judge of the first class in the exercise of his ordinary and special original jurisdiction, of which the Appeals from his decision.

amount or value of the subject-matter exceeds 5,000 rupees, the appeal from his decision shall be direct to the High Court.

NOTE.

22 B 963 ; 20B. 265.

27. The Governor of Bombay in Council may invest any Subordinate Judge of the first class with power to hear appeals from such decrees and orders of subordinate Courts as may be referred to him by the judge of the district.

Decrees and orders so passed in appeal by a Subordinate Judge of the first class shall have the same force as if passed by a District Judge.

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

28. The Governor of Bombay in Council may invest, within such local limits as he shall from time to time appoint, any Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes, for the trial of suits cognisable by such Courts up to the amount of 500 rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of 50 rupees.

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

NOTE.

12 B. 486 ; 14 B. 371.

28A.* (1) The High Court may by general or special order invest any Subordinate Judge, within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be under the Indian succession Act, 1865, the Probate and Administration Act, 1881, or paragraph 5 of Schedule III to the Code of civil Procedure, 1908,

(2) Every order made by a Subordinate Judge by virtue of the powers conferred upon him under subsection (1) shall be subject to appeal to the High Court or the District Court according as the amount or value of the subject matter exceeds or does not exceed five thousand rupees.

Section 28 A has been added by Bom Act 5 of 1912.

(3) Every order of the District Judge passed on appeal under sub-section (2) from the order of a Subordinate Judge shall be subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decree.

29. Each Subordinate Judge shall use a seal one inch and-a-half in diameter, bearing the Royal Crown
 Seal of Subordinate Judge. with the following inscription in English and the principal language of the District—"Subordinate Judge of,"

30, 31. [*First Subordinate Judge ; pending proceedings.*]
Repealed by Act XII. of 1876.

32 No Subordinate Judge or Court of Small Causes shall
 Reference to (Government receive or register a suit in which the Gov-
 suits ernment or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section 19) such suit shall be instituted.*

† " Provided that nothing in this section shall be deemed to apply to any suit, merely because—
 Proviso.

" (a) a municipal corporation constituted under Bombay Act No. VI of 1873, or any other enactment for the time being in force, is a party to such suit, and an officer of Government is, in his official capacity, a member of such corporation, or

" (b) an officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph,† is, in virtue of such appointment,‡ a party to such suit."

" or

(c) an officer of Government—

(d) who has been declared or appointed to be the sole member or one of a Board constituting a Court of Wards, or

(e) to whom all or any of the powers of a Court of Wards have been delegated, or

* The section, substituted by Act X of 1876, s. 15, is printed here.

† This proviso has been added to this section by Act XV of 1880, s. 3.

‡ In s. 32, proviso, cl. (b), certain words, repealed by Act XII of 1891, have here been omitted.

- (iii) through whom all or any of the powers of a Court of Wards are exercised, or
- (iv) who has been appointed a manager of the property of a Government Ward, or
- (v) who has been appointed a guardian of the person of a Government Ward, or
- (vi) who has been appointed a guardian of the person or property, or both, of a minor, under section 3, sub-section (1) of section 19, sub-section (2) of section 19, section 20, sub-section (1) of section 22, or sub-section (1) of section 41, respectively, of the Bombay Court of Wards Act, 1905, is in virtue of such declaration, appointment, delegation or exercise of powers a party to such suit.”*

Removal or Suspension.

33. Whenever the High Court is of opinion that there are good grounds for making a formal and public enquiry into the truth of any imputation or misconduct by any Subordinate Judge, the High Court may appoint a Commissioner or Commissioners for the purpose of holding such an enquiry, and, on the receipt of his or their report, may order that the Subordinate Judge be removed or suspended from office or reduced to a lower class.

The provisions of Act No. XXXVII. of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

Suspension of Subordinate Judges by High Court or by District Judge.

34. The High Court may suspend any Subordinate Judge from office pending the result of an enquiry into his behaviour under this section.

Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Subordinate Judge under his control. But whenever the District Judge suspends any such Subordinate Judge, he shall forthwith report the case for the orders of the High Court,

Saving of power of Government to suspend or dismiss.

Nothing in this section or in section 33 shall be held to interfere with the right of Government to suspend, or remove from office, any Subordinate Judge at their discretion.

~~The words within quotations have been added by Bom. Act 5 of 1914.~~

PART VII.

TEMPORARY VACANCIES.

35. In the event of the death of the District Judge, or of his Temporary vacancy of being prevented from performing his duties office of District Judge. by illness or other casualty, or of his absence from his district on leave, the first in rank of the Assistant Judges in the district, or, in the absence from the district of an Assistant Judge, the first in rank of the Subordinate Judges, shall assume charge of the District Court without interruption to his ordinary jurisdiction, and, while so in charge, shall perform the duties of a District Judge with respect to the filing of suits and appeals, receiving pleadings, execution of processes, return of writs, and the like, and shall be designated Assistant Judge or Subordinate Judge, as the case may be, in charge of the district, and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto.

36. Any District Judge leaving the sadr station, and proceeding on duty to any place within his district, Delegation of powers of District Judge. may delegate to an Assistant Judge, or in the absence of an Assistant Judge, to a Subordinate Judge at the sadr station, the power of performing such of the duties enumerated in section 35 as may be emergent; and such officer shall be designated Assistant or Subordinate Judge, as the case may be, in charge of the sadr station.

37. In the event of the death, suspension or temporary absence of any Subordinate Judge, the District Temporary vacancy of office of Subordinate Judge. Judge may empower the Judge of any subordinate Court of the same district to perform duties of the Judge of the vacated subordinate Court, either at the place of such Court or of his own Court; but in every such case the registers and records of the two Courts shall be kept distinct.

PART VII.

MINISTERIAL OFFICERS.

38. All ministerial officers of the Civil Courts in each district shall be appointed, and may be fined, suspended, or dismissed, by the District Judge, Appointment, &c. of ministerial officers. subject to such rules as the High Court may from time to time prescribe;

Provided that the Judge of every subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do not exceed rupees ten per mensem, and may by order fine, suspend, or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

Every such order shall be subject to appeal to the District Judge; and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto shall apply to all appeals under this section.

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

39. The duties of the said ministerial officers shall be regulated by such rules as the High Court may from time to time prescribe.

Duties of ministerial of
ficers.

40. The Governor of Bombay in Council may, under the general control of the Governor-General of India in Council, appoint to any Civil Court under this Act a Clerk of the Court who, in addition to such duties as may from time to time be prescribed by the High Court, may receive and register plaints, and shall refer such as he may consider should be refused for the orders of the Judge of the Court, and may sign all processes, and authenticate copies of papers.

Power to appoint clerks
of the Courts.

PART IX.

MISCELLANEOUS.

41. The proceedings of each Civil Court shall be kept and recorded according to such rules as the High Court may from time to time prescribe. The High Court shall also lay down rules under which copies of papers may be granted.

Rules for keeping pro-
ceedings.

42. The High Court shall from time to time, with the sanction of the Governor of Bombay in Council, prescribe and regulate the fees to be taken for any process issued by any Court, the constitution of which is declared by this Act, or by any officer of such Court,

Fees for process.

Tables of fees so prescribed shall be published in the Government Gazette.

43. The District and subordinate Courts shall sit from day to day, except on Sundays New Year's Day, Goon Friday, Christmas Day, and Her Majesty's Birth Day, and such other days as may be sanctioned for each or every district by the High Court.

The High Court may also permit the Civil Courts under its control to adjourn for a period or periods not exceeding the whole six weeks in each year.

Vacation.

ACT V. OF 1870,

The Unclaimed Deposits Act, 1870.*

RECEIVED THE G.—G.'s ASSENT ON THE 4TH FEBRUARY

An Act to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain moneys transferred to Government.

WHEREAS the High Courts of Judicature at Fort William, Madras, and Bombay, have no power to deal with the costs of petition under section four of Act No. XXV of 1866 (*to transfer to the Government of India certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras, and Bombay*),† for payment of certain securities, moneys, or proceeds transferred to Government; And whereas it is expedient to confer such power upon the said High Courts; It is hereby enacted as follows:—

- 1.** Whenever any of the said Courts shall make an order on any such petition, the Court may direct by whom the whole or any part of the costs of each party are to be paid.

Power to direct by whom costs are to be paid

* This title was given by the Indian Short Titles Act (XIV. of 1897) for the statements of Objects and Reasons, see Gazette of India, 1870, Pt. V, P. 5.

† The portions relating to the Administrator-General, which were repealed by Act II. of 1874, have been omitted.

ACT NO. VII. OF 1870.

The Court Fees Act 1870.*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's assent on 11th March 1870.)

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called the Court Fees Act 1870.

Extent of Act. It extends to the whole of British India;*

Commencement of Act. And it shall come into force on the 1st day of April 1870.

* For the Statement of Objects and reasons see *Gazettee of India* 1869, Pt. V., 57 ; for proceedings in Council, see *ibid*, 1869 supplement pp. 1179 and 1452 ; *ibid*, 1870, Supplement, pp. 52, 378, 421, 427, and 434.

Act VII of 1870 has been declared in force—

in Upper Burma generally (except the Shan States), by the Burma Laws Act (XIII of 1898) s. 1 (1) Sch. 1. ;
in British Baluchistan by Regulation (II of 1913) s. 3 ;
in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation (III of 1899).

In Subdivision of Angul by Reg. III of 1913 s. 3 ;

It has further been declared by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874) in force in the following Scheduled Districts namely—

the District of Hazáribagh (see *Gazettee of India*, 1881 Pt. 1 p. 507) ;

the District of Lohardága (now called the Ranchi District) (see *Calcutta Gazette*, 1899 Pt. 1 p. 44; *ib.*, 1881 Pt. 1, p. 506) ; the District of Lohardága then included the present District of Palamau separated in 1894 ;

the District of Mánbhum (see *Calcutta Gazette*, 1881 Pt. 1 p. 509) ;

the Pargana Dálbhum in the District of Singhbhum (see *Calcutta Gazette* 1881 Pt. 1, p. 510) ;

the Scheduled District in Ganjam and Vizagapatam (see *Gazettee of India* 1898 Pt. 1, p. 869) ;

the North-Western Provinces Taráí (see *Gazette of India* 1876. Pt. I., p. 505).

It has been extended, by notification under ss. 5 and 5 A of the same Act, to the following Scheduled Districts, namely :—The Garo Hills District, the Khasi and Jaintia Hills District, the Naga Hills District, the North Cachar Sub-division of the Cachar District, the Mikir Hill Tract in the Nowgong District, and the Dibrugar Frontier Tract in the Lakhimpur District, provided that the Act does not apply to natives of these districts and tracts who are assessed to house-tax except in such places and cases as the Deputy Commissioner may withdraw from the operation of the exemption—See *Assam Gazette*, 1897, Pt. I., p. 861 ; *Gazette of India*, 1884, Pt. I., p. 164.

"Chief Controlling Revenue-authority defined.

"2. In this Act unless there is anything repugnant in the subject or context Chief Controlling Revenue authority', means—

(a) in the Presidency of Fort St. George "the Presidency of Fort Willam in Bengal"* and the territories respectively under the administration of the Lieutenant Governor of "Bihar and Orissa"* and the North Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue ;

(b) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner ;

(c) in Sindh—the Commissioner ;

(d) in the Punjab and Burma, including Upper Burma—the Financial Commissioner ; and

(e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf."†

CHAPTER II.

FEES IN THE HIGH COURTS, AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

3. The fees payable for the time being to the clerks and

Levy of fees in High Courts on their original sides. officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by "section 15 of the Indian High Courts Act, 1861, or section 107 of the Government of India Act, 1915"‡

It has also been applied to the Baluchistan Agency Territories by the Baluchistan Agency Laws Law, 1890, s. 4 (1).

The Act came into permanent operation in Aden on 1st April 1876.—See *Bombay Government Gazette*, 1876, Pt. I., p. 956.

It has been declared inapplicable to proceedings before officers making a settlement, and certain other cases under the Santhal Parganas Settlement Regulation (III. of 1872). s. 8.—See now the Act as amended by the Santhal Parganas Justice and Laws Regulation (III. of 1899).

The Act has been amended in Upper Burma (see the Upper Burma Civil Courts Regulation, I of 1896, s. 36); in the Punjab (see the Punjab Courts Act, XVIII. of 1886, s. 71); in Lower Burma (see the Lower Burma Courts Act, VI. of 1900. Sch. I, Pt I.)

* The words within quotations have been inserted by Act 24 of 1917.

† Section 2 was added by the Court Fees (Amendment) Act (X of 1901), a. 2.

‡ See the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104) and Government of India Act 1915. The words within quotations have been substituted by Act 24 of 1917.

or chargeable in each of such Courts under No. 11 of the First, and Nos. 7, 12, 14,* 20, and 21 of the Second Schedule to this Act annexed ;

and the fees for the time being chargeable in the Courts of Small Causes|at the Presidency-towns† and their several offices ;

Levy of fees in Presidency
Small Cause Courts,

shall be collected in manner hereinafter appearing.

4. No document of any of the kinds specified, in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ;

Fees on documents filed,
&c., in High Courts in
their extraordinary juris-
diction ;

or in the exercise of its extraordinary original criminal jurisdiction ;

or in the exercise of its jurisdiction as regards appeals from the judgment of two or more judges of the said Court, or of a Division Court ;

in their appellate juris-
diction.

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence ;

As Courts of reference or in the exercise of its jurisdiction as a Court of reference or revision ;

unless, in respect of such document, there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

NOTES.

Memorandum of appeal—is a document specified in the first and also in the second schedule of the Act and within the meaning of the section. It should not, therefore, be filed or recorded in or received by any High Court unless the proper Court fee in respect of it be paid. (12A. 129 F. B.). But no Court fee is payable on Letters patent appeal from the decision of a single judge, inasmuch as this section makes no provision for the case of such appeals, (19 A. L. J. 677)

Scope of the Section—This section is imperative in its terms and makes it impossible for the Court to entertain a memorandum of appeal upon which a proper amount of Court fee has not been paid. 18 C. L. J. 133.

* Here the number "16," repealed by the Repealing and Amending Act (XII of 1891), has been omitted.

† See the Presidency Small Cause Courts Act (XV. of 1882), Ch. X.

For amount of fees payable in certain cause, see the North. Western Provinces Rent Act (XII. of 1881), s. 95, as amended by the North-Western Provinces Rent Act (XIV. of 1886), s. 2.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court, as the Chief Justice shall appoint, either generally or specially, in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

NOTES.

Taxing officer's decision is final. 32 A. 59 ; 12 A. 129 ; 21 M. 269 ; 3 Pat. L. J. 92 ; 4 Pat. L. J. 700. But where the decision of the taxing officer is erroneous, additional Court fee need not be paid 15 A. 117. The objection as to insufficiency of Court fees could be raised at the hearing of the appeal where it was not decided by a proper officer. 37 C. 914

Levy of additional Court fees after decision is not allowable. 32 Ind. Cas. 534.

CHAPTER III.

FEES IN OTHER COURTS, AND IN PUBLIC OFFICES.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless, in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

NOTES

Applications not required to be in writing do not fall within this section. 2 N. W. P 418.

See 12C. 542 ; 8A. 396 ; 15 M. 29 ; 17 W. R. 489 ; 36. M. L. J. 47.

Computation of fees
payable in certain suits—

7. The amount of fee payable under this Act in the suits* next hereinafter mentioned shall be computed as follows :—

- i. In suits for money (including suits for damages or compensation, or arrears of maintenance or annuities, or of other sums payable periodically)—
for money ; according to the amount claimed.
 - ii. In suits for maintenance and annuities or other sums payable periodically—according to the value
for maintenance and of the subject matter of the suit, and
annuities. such value shall be deemed to be ten
times the amount claimed to be payable for one year ;
 - iii. In suits for moveable property other than money, where
for other moveable prop- the subject-matter has a market-value—ac-
erty having a market- cording to such value at the date of present-
value ; ing the plaint :
 - iv. In suits—
 - (a) for a moveable property where the subject-matter has no
for moveable property market-value, as, for instance, in the case of
of no market-value documents relating to title,
 - (b) to enforce the right to share in any
to enforce a right to property on the ground that it is joint family-
share in joint family-prop- property,
 - (c) to obtain a declaratory decree or
for a declaratory decree order, where consequential relief is prayed,
and consequential relief.
 - (d) to obtain an injunction,
for an injunction ;
 - (e) for a right to some benefit (not herein
for easements ; otherwise provided for) to arise out of land,
and
 - (f) for accounts—according to the amount at which the relief
accounts ; sought is valued in the plaint or momoran-
dum of appeal.
- In all such suits the plaintiff shall state the amount at which
he values the relief sought.....†

* As to the valuation of suits for the purpose of determining the jurisdiction of Courts, see the Suits' Valuation Act (VII. of 1887).

† The words, "and the provisions of the Code of Civil Procedure, section 31, shall apply as if, for the word 'claim,' the words 'relief sought' were substituted," repealed by the Repealing and Amending Act (XII of 1891), have here been omitted.

v. In suits for the possession of land, houses, and gardens—
 according to the value of the subject-matter;
 for possession of land, and such value shall be deemed to be—
 houses, and gardens.

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share
 of an estate paying annual revenue to Government,

or forms part of such an estate, and is recorded in the Collec-
 tor's register as separately assessed with such revenue,
 and such revenue is permanently settled—

ten times the revenue so payable :

(b) where the land forms an entire estate, or a definite share
 of an estate paying annual revenue to Government, or
 forms part of such estate, and is recorded as aforesaid ;

and such revenue is settled, but not permanently—

five [ten]* times the revenue so payable :

(c) Where the land pays no such revenue, or has been par-
 tially exempted from such payment, or is charged with
 any fixed payment, in lieu of such revenue,

and nett profits have arisen from the land during the year next
 before the date of presenting the plaint—

fifteen times such nett profits :

but where no such nett profits have arisen therefrom—the
 amount at which the Court shall estimate the land with
 reference to the value of similar land in the neighbourhood ;

(d) where the land forms part of an estate paying revenue to
 Government, but is not a definite share of such estate,
 and is not separately assessed as above mentioned—
 the market-value of the land:

Provided that, in the territories subject to the Governor of
 Proviso as to Bombay in Council, the value of the land
 Presidency. shall be deemed to be—

(1) where the land is held on settlement for a period not ex-
 ceeding thirty years, and pays the full assessment to
 Government,—a sum equal to five times the survey-
 assessment ;

(2) where the land is held on a permanent settlement, or on
 a settlement for any period exceeding thirty years,
 and pays the full assessment to Government—a sum
 equal to ten times the survey-assessment; and,

* In the Punjab the word "five" has been substituted by the word "ten" by
 Punjab Act 3 of 1914.

- (3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment or the portion of assessment so remitted:

Explanation.—The word “estate,” as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat, shall have executed a separate engagement to Government, or which, in absence of such engagement shall have been separately assessed with revenue;

(e) where the subject-matter is a house or garden —according to the market-value of the house or garden:

vi. In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v. of this section) of the land, house, or garden in respect of which the right is claimed:

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the complaint:

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

ix. In suits against a mortgagee for the recovery of the property mortgaged,

and in suits by a mortgagee to fore-close the mortgage,

or, where the mortgage is made by conditional sale to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage:

X. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration;

(b) of a contract of mortgage—according to the amount agreed to be secured;

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any), and of the rent agreed to be paid during the first year of the term ;

(d) of an award—according to the amount or value of the property in dispute:

between landlord and tenant. xi. In the following suits between landlord and tenant—

- (a) for the delivery by tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,

* “(cc) for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy!”

- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of “immovable property,”* from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent—

according to the amount of the rent of the land to which the suit refers payable for the year next before the date of presenting the plaint.

NOTES.

Valuation—The plaintiff in a declaratory suit with consequential relief is not at liberty to value the suit arbitrarily. (6 C. L. J. 427; 14 C. L. J. 47 : 12 M. 223 ; but see 32 C. 734). See also 20 M. 289 ; 18 B. 696 ; 13 B. 517 ; 97 P. L. R. 1901,

Clause (I)

Mortgage suits.—Plaintiffs brought a suit for sale upon a mortgage. There were two prior mortgages on the property in respect to which no relief was claimed and no court fee paid. Held, that the plaintiff can redeem the prior mortgages but cannot obtain a decree for sale, 30 A. 103 ; A. W. N. 1882, 97.

Decree for mesne profits.—When a suit for recovery of possession and mesne profits is decreed, the mesne profits being directed to be ascertained in the execution. Held, that the memorandum of appeal preferred against the decree for mesne profits should bear Court fee stamp upon the amount of the mesne profits claimed antecedent to the suit. 13 C. W. N. 85 ; See also 17 B. 41 21 M. 371.

Future profit.—A claim for future profit is governed by this clause. 2 A. 682 (F. B.)

In a case of an appeal from a decree directing ejectment and awarding mesne profits the Court fee should be charged on the land and the amount of mesne profits. 16 M. 310.

Pre-emption.—When the question in appeal relates solely to the amount to be paid by the pre-emptor the Court fee must be calculated *ad valorem* on the amount allowed as the sale price on the one side and on the other. 6 A 488.

*The words within quotations have been added by Act VI of 1905.

A suit for specific moveable property or for compensation, arising from the same cause of action, is not a multifarious suit, simply because the moveable property claimed may comprise a number of separate items, such a suit must be stamped under cl. 1, S. 7 of the Act. 3 A. 131.

The fee payable in a suit for money must be according to the amount claimed 47 Ind. Cas. 992.

A suit by the heir of a deceased landlord for the recovery of arrears of rent against a tenant and also for an injunction restraining certain others from disputing his title as landlord, is based upon two causes of action and falls under cl. (i) and cl. (iv) of this section. 6 S. L. R. 114.

Clause (II)

Scope—Where there are general words following particular and specific words in a section of a statute, the general words must be confined to things of the same kind as those specified. Consequently in construing s. 7, clause (ii) of the Court Fees Act the expression "other sums payable periodically" must be limited by the specific words that precede it. (4 Pat. L. J. 561—51 Ind. Cas. 15) see also 3 M. L. J. 242 ; 8 M. 384 ; A. W. N. 1886, 228. A claim for future profits is governed by clauses 1 and 2 of this section. 2 A. 682 (F. B.)

Clause (IV)

Valuation.—Where plaintiff sues for a declaratory decree and asks for consequential relief and puts his own valuation upon the consequential relief then for purposes of Court fee and also for purposes of jurisdiction, it is the value which plaintiff puts upon the plaint, determines the both.—23 C. W. N. 753 ; 31 Ind Cas 807 ; 2 A 869 ; 32 C. 734 ; 17 B. 56 ; 38 M. 922 (F. B.) ; 16 C. L. J. 914 ; 40 C. 615 ; 16 C. L. J. 194 ; 7 A. L. J. 842. But see 14 C. L. J. 47 ; 28 P. R. 190 ; 4 Pat L. J. 703 ; 5 P. L. J. 394 ; 36 A 500 ; 62 Ind Cas 685 ; 44 B 331.

Clause (a)—This clause applies in a suit to obtain possession of a mortgage deed where the debt had not been paid and the defendant was not entitled to keep the deed. 39 P. R 1875. See also 10 P. R. 1871.

Clause (b)—This clause appears to be designated to cover merely the cases but quite possible cases where the plaintiffs' status as a co-parcener is in dispute and is sought to be enforced. 20 M. L. J. 755 F. B. ; 8 Ind Cas 512, 104 P. R. 1895 ; A. W. N. (1885) 48 ; 6 Ind Cas 628 ; 1892 P. J. 13 ;

The Court fee should be sufficient to cover the value of the property claimed by the plaintiff. 1882 P. J. 148 ; 150 P. R. 1908.

But where the plaintiff in a suit for partition is admittedly in possession and only seeks to change the form of the enjoyment of the share a Court fee of Rs. 10 under Art 17 of Sch II would suffice. 15 C. P. L. R. 120 ; 33 B. 658.

Clause (c)—The substance in the plaint determines whether it falls under this clause. 5 Ind. Cas. 927 ; 30 C. 788.

Consequential relief—A prayer for injunction is consequential relief. 10 B. 60 ; 18 B. 100 ; 11 C. W. N. 705=6 C. L. J. 427 ; 32 C. 734 ; 15 M. 15 ; 33 B. 307 ; 15 A. 378 ; 43 Ind. Cas. 995 ; 44 Ind. Cas. 398.

Consequential relief was held to be sought in the following cases :—

(1) In a suit in which the relief claimed is declaration that a decree is fraudulent 4 Pat. L. J. 703 ; 3 Pat. L. J. 92 ; 56 Ind. Cas. 360 ; 54 Ind. Cas. 833 ; 56 Ind. Cas. 55.

(2) In a suit for assessment of rent and for the recovery of a specific sum of money as damages for use and occupation. 4 Pat. L. J. 561.

(3) In a suit for declaration that adoption never took place, where title to immoveable property is indirectly in issue. 58 Ind. Cas. 966 ; 5 P. L. J. 339.

(4) In a suit for partition where the plaintiff must clear up his title. 63 Ind. Cas. 203.

(5) Suit by Hindu reversioner for declaration of invalidity of alienation by widow and for appointment of receiver. 62 Ind. Cas. 36 ; see also 6 Pat. L. J. 101.

(6) Where the decree is to be forwarded to the Registration office for cancelling a registered deed, such forwarding is a consequential relief. 3 Pat. L. J. 194.

(7) In a suit where declaration is sought for invalidating a revenue sale and for possession of property sold. 3 Pat. L. J. 448.

(8) Where property required to be released from attachment and possession. 43 Ind. Cas. 971 ; 1885 A. W. N. 48.

(9) Where plaintiff prayed for declaration that a sale by official Receiver is invalid and for the appointment of a fresh Receiver. 32 M. L. J. 447.

(10) A suit to enforce registration of a document. 12 M. L. J. 87 ; but see also 12 M. L. J. 88.

(11) A suit for cancellation of a document under s. 39 of the specific Relief Act is a suit for a declaration and a consequential relief. 29 B. 207 2 L. B. R. 266 ; 27 M. 470. 2 P. R. 1886;

A suit for the setting aside of the lease and to have the building erected on the land by the lessee demolished is one for a declaratory decree in which consequential relief is sought. 4 A. 320.

(13) A suit to set aside an illegal sale held for arrears of revenue and a declaration of right and possession in respect of the property is dispute is a suit to obtain a declaratory order, where consequential relief is prayed for. 6 C. W. N. 157.

Clause (d)—In a suit for an injunction an appellant must value the relief sought (10 B. 60). But the plaintiff is at liberty to value his relief. 118 P. L. R. 1904. 22 Bom. L. R. 1450 ; 46 Ind. Cas. 884. 24 M. 34.

Clause (f)—A suit for administration is on the same footing as a suit for accounts for purpose of Court fees. 39 B. 545 ; 55 Ind. Cas. 262 ; 24 C. L. J. 448 ; 4 L. B. R. 279.

Partnership—Where the plaintiff seeks the relief contemplated by S. 265 of the contract Act by a suit for account and winding up of partnership he must pay ad valorem Court fees stamp. 7 B. 126. 41 M. L. J. 438. 13 C. L. R. 160 ; 1 M. 340 ; 6 C. 321 ; 7 B. 125 15 Bom. L. R. 1123.

Clause (V)

Clause (a)—In a suit to recover possession of a definite share in a permanently settled revenue paying estate the Court fee on the plaint should be calculated according to this clause at ten times of the proportionate revenue annually payable. The definite share do not mean share separately assessed. 12 C. W. N. 990 ; 8 C. 192. See also 33 Ind. Cas. 683 ; 58 Ind. Cas. 132.

Clause (b)—Vide 8 A. L. J. 821 ; 29 A. 382 ; 3 A. L. J. 511 ; 41 Ind. Cas. 167 ; 45 Ind. Cas. 982.

Land—does not include houses or garden. 24 A. 218 ; 18 M. L. J. 243. Garden is used in the sense of ornamental garden. 40 M. 824.

Clause (c)—For the purpose of the Court Fees Act Parambas in Malabar should be classed either as land paying no revenue or as gardens, and the question is one of fact which must be decided in each case. 12 M. 301 (F.B.) See also 18 P. R. 1875. Before a party can successfully rely on this subclause

he must establish that the land in suit pays no revenue permanently or temporarily settled thereon, or has been partially exempted from such payment or is charged with a fixed payment in lieu of such revenue. 41 C. 812. See also 60 Ind. Cas. 5. The case of lands subject to fluctuating assessment is governed by this sub-clause. (50 Ind. Cas. 142.)

Subclause (d)—provides merely for the case of lands excepted from the operation of subclause (a) and (b) and has no reference to the case of an entire estate or a definite fraction or part of an estate. 50 Ind. Cas. 142.

Subclause (e)—In a suit for land forming a garden and two houses, the valuation of court fee is governed by S. 7 (e) and is not to be arrived at, either for court fee or in ascertaining jurisdiction, by the artificial 30 times *Jama* rule notwithstanding that the land is assessed to land revenue 71 P. R. 1914; 2 Lah. L. J. 362 See also. 6 Bom. L. R. 475; 19 P. R. 1908 (F. B.)

Clause (6)—vide 32 A. 119 (F. B); 123 P. L. R. 1903;

Clause (VIII)

Suit to set aside attachment—A suit which is terms to set aside a sale on the ground that an attachment is not binding is virtually a suit to set aside an attachment and court fees should be paid on the amount of the attachment or the value of the land attached which ever is less. 27 A. 440; 1 B. 352 See also, 4 M. L. J. 183.

Clause (IX)

Redemption—A suit for recovery of property mortgaged from a mortgagee is one for redemption and is governed by this clause. 1889 P. J. 58; 7 O. C. 152; 12 O. C. 130, 4 A. L. J. 275; 30 A. 547; 20 M. L. J. 121; 12 M. L. T. 439.

Appeal—Vide. 9 O. C. 153; 1882 P. J. 106; 10 B. 41; 447; 57 Ind. Cas. 215; 3 Lah. L. J. 156; 50 Ind. Cos. 279; 11 A. L. J. 1016 (F. B.)

Mortgage suit—For closure decree—Vide 6 N. L. R. 164

Clause (X).

Sub-clause (c.c.)—Vide 34 C. L. J. 94—25 C. W. N. 768; 15 Ind. Cas. 56.

Sub-clause (d)—Vide Oudh S. C. 32.

Clause (XI)

Sub-clause—(cc)—The court fee payable on a suit for ejectment from a house against a tenant is chargeable on one year's rent under this clause. 24 P. L. R. 1907. See also 12 A. L. J. 933; 27 M. L. 475; 24 P. L. R. 1907

Sub clause (d)—A suit to contest a notice of ejectment on the ground that the plaintiff is entitled first to receive compensation for improvements effected by him on the land before he can be ejected is governed by this sub-clause, 111 P. R. 1883; 11 C. L. R. 91.

Sub-clause (e)—Vide 32 C. 268, 17 M. L. J. 478

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

NOTE.

Advalorem court fee ought to be paid on the memorandum of appeal computed according to the difference between the amount awarded and amount claimed by the appellant. 39 C, 906. 19 P. W. R 1913.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house, or garden as is mentioned in section 7, paragraphs v. and vi., have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Power to ascertain nett profits or market-value.

NOTES

Appointment of commissioner—The Court is not bound to appoint a Commissioner to hold an investigation under this section, 29 A. 749.

10. i. If, in the result of any such investigation, the Court finds the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee ; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated :

Procedure where nett profits or market-value wrongly estimated.

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.*

NOTES

Application—This section is not susceptible of restriction to any particular stage. 2 M. 308 ; 27 A. 297.

Clause 2.—Either before or after the expiration of the time fixed by a Court for payment of additional fees by the plaintiff whom it is ordered to pay the same, acting under cl. 2 of s 10 of the Court—Fees Act, it is competent to the Court to enlarge the time fixed, on circumstances rendering it just and proper that such extensions should be given. If ultimately the order is not complied with and additional fees not paid, the Court should pass an order dismissing the suit and not one rejecting the plaint as under s. 54 of the Civil Procedure Code. 19 A. 240, P. R. 84 of 1876 ; until the appeal is admitted, it is not competent to the appellate Court to pass an order dismissing the original suit under ss. 10 and 11 for non-payment of Court fee, 1 M. L. J. 528.

A plaintiff is at liberty to with-draw any part of his claim to bring it within the Court fees he had paid on his plaint and a Court is not bound to dismiss a claim, if a plaintiff instead of complying with an order for payment of deficient Court-fee abandons that portion of his claim which the Court had held to have been over valued 27 A. 151.

* Clause iii having been repealed by the Repealing and Amending Act (XII of 1891) has been omitted.

Time given by Court—It is competent to a Court, after the expiry of the time initially granted, to enlarge the time for payment of the deficit Court fees on a plaint, upon payment of deficit Court fees, the suit must be taken to have been instituted on the day when the plaint was originally presented. 2 Ind. Cas. I ; see also. 15 C. L. J. 120 ; 13 C. L. J. 78 ; 3 Ind. Cas. 830.

Suit—includes appeal. 15 Ind. Cas. 463

Appeal—Vide 1 A. L. J. 392 ; 20 A. 362 ; 28 A. 270 (F. B.) ; 7 A. 528 ; 15 M. 288 ; A. W. N. (1905) 277 ; 1921 Pat. 161 (F. B.) , 6 Pat. L. J. 243 ; 4 Pat. L. J. 703 ; 5 P. L. J. 508 ;

Dismissal of a suit under ss. 10 and 11 has the same effect as a rejection of the plaint under s. 54 of C. P. Code.—12 A. 129 (F. B.) = A. W. N. 1890, 39 ; 4 Pat. L. J. 703.

11. In suits for mesne profits or for immoveable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amounts so decreed shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix the suit shall be dismissed.

NOTES.

Scope—The word suit in the last clause of para 2, S 11, Court Fees Act, does not mean the entire suit. It can fairly be construed as the suit or claim in respect of *mesne* profits. 24 C. 173. The intention of the first part is that no time should be fixed for payment of extra Court fee but the execution should be stayed until the extra fee is paid. 30 M. 32 ; 59 Ind. Cas. 385.

Enlargement of time—The Court can extend time originally fixed for payment of extra Court fee: 13 C. L. J. 432 ; See also 1 A. L. J. 350 ; 24 O. C. 209.

Suit for account—is one in which the relief is by way of account. 6 Bom. L. R. 1102.

Future mesne profits—No Court fee is payable on future mesne profits. 20 M. L. J. 98. See also 33 C. 1232 ; 6. O. C. 351. But see 62 Ind. Cas. 175.

Suit for damage—In a suit for damage offer to pay additional court fees if more damages are due is not barred. 17 M. L. J. 625.

Para 2. The final provision of this section does not apply to the conditions set forth in the first paragraph of this section. 11 Ind. Cas. 73.

Interest—on decree is not chargeable with Court fees 12 B. H. C. 227.

Part execution—of decree is allowed before payment of Court fees under this section. 12 B. 98

Appellate court cannot extend time. 22 Ind. Cas. 890.

12. i. Every question relating to valuation for the purpose of the determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit :

ii. But, whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii., shall apply.

NOTES.

Scope—The correct meaning of this section is that the decision of the Court is final only as regards the actual appraisement of the suit and the determination of such question as relates directly and immediately thereto and that the question whether such court was right or wrong in holding the suit to be one of a particular class does not relate directly or immediately to such appraisement and it is open to challenge on appeal. 49 Ind. Cas. 711 (F. B.) 16 C. L. J. 371; 6 S. L. R. 72; 3 Pat. L. J. 443; 47 Ind. Cas. 7; 25 Ind. Cas. 506; see also 10 C. 599=12 C. L. R. 143; 23 W. R. 296; 1 A. 360; 28 C. 334; 23 W. R. 296; 2 B. 219; A. W. N 1903, 214 see also 1 A. 360; 19 A. 165; 23 B. 486; 17 B. 56; 15 B. 82; 10 B. 610 (F.B.); 4 M. 204.

But this section has no application to the case where the Court decides the valuation of the suit for purposes of determining the pecuniary limits of its jurisdiction. 52 Ind. Cas. 1001.

Appeal—Once an appeal has been dismissed for whatever cause, the High Court is *functus officio* and ceases to have seisin of the appeal. 4 Pat. L. J. 472.

13 If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, * is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351† of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

* This reference should now be read as applying to Act V. of 1908.—See s. 158 of that Act.

† The reference to s. 351 of the Code of Civil Procedure (Act VIII of 1859) should now be read as applying to order 41, rule 23 of Act V. of 1908.

NOTES.

Refund under this section of the Court fee paid on an appeal from an order rejecting a plaint under s. 113 Civil Procedure Code.—Vide 16 M. L. J. 30.

See also 15 C. L. J. 658; 5 A. L. J. 545; 14 W. R. 47; 6 W. R. Mis. 65; 4 B. L. R. Ap. 96, 14 A. L. J. 671, 28 Ind. Cas. 300, 3 Pat. L. J. 67.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

NOTES.

Object—The apparent intention of this section is to require full stamp in every case of delay after the eighty-ninth day from the date of the decree, and to permit a refund at the discretion of the judge when the delay is not due to the appellant's laches. 9 M. 134; 9 C. L. R. 479. The provision of section 5 of the Limitation Act is not applicable to extend the period. 15 C. L. J. 505.

15. Whenever an application for a review of judgment is admitted and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application* as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

NOTE.

Vide—11 B. L. R. 372 N.

S. 16 [Repealed by Act V of 1908, Sch. V.]

17. Where a suit embraces two or more distinct subjects, the plaintiff or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

* The word has been substituted by Act XX of 1870.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 9.*

NOTES.

Scope—This section is applicable only to a case where cumulative relief sought by the plaintiff. 15 B. 82; But see 30 M 61; 16 M. L. J. 462; 11 O. C. 173; 47 Ind. Cas. 886; 44 Ind. Cas. 143. This section applies only to suits. 23 C. 723 (F. B.) See also. 10. C. 61, 7 A. 528; 13 C. L. R. 156.

Distinct Subjects—Distinct subjects mean distinct and separate causes of action 2 A. 679; 1 A. 55. See also 16 M. 415; 7 A. 761; 9 A. 252; 29 A. 155; 27 A. 186; 5 L. B. R. 94 (F. B.); 16 A. 401; 29 A. 160; 18 M. 459; 2 A. 682; 1887 P. J. 271; 1887 P. J. 8; 36 B. 628; 8 Bur. L. T. 217 (F. B.)

Suits for possession and mesne-profits—The claim in such a suit is to be regarded as one entire claim (8 C. 593 F. B.=10 C. L. R. 359; 16 A. 401 See also 3 A. 131; 56 Ind. Cas. 883; 4 Pat. L. J. 195)

Subject to maximum limit—The aggregate of the Court fee payable in respect of each matter should be paid but it is subject to the maximum limit under Art. I of Sch. I. 3 A. 188, 29 C. 143.

In a suit on a khata computation of Court fees should be made on the balance due and not on each separate item. 23 Bom. L. R. 695.

In a suit by a landlord against 25 sets of tenants in respect of 25 holdings for a declaration that their several lands were held under the *batai* system, and that they were wrongly recorded as paying cash rent, held that a court-fee of Rs. 10 should have been paid in respect of each of the 25 sets of tenants 4 Pat. L. J. 297; 4 Pat. L. J. 299.

Two mortgage bonds—Where the plaintiff brings a suit on the basis of two mortgage bonds, in which the same properties are hypothecated he has to pay *advalorem* Court fee on the amount due under each of the two bonds separately and not on the total claim.—1 P. L. T. 444.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which a police-officer may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the code of criminal procedure, † the complainant shall pay a fee of eight-annas [a fee of one rupee ‡] unless the Court thinks fit to remit such payment.

Written examination of complainants.

Examination of certain document.

19. Nothing contained in this Act shall render the following documents chargeable with any fee :—

* The reference to S 9 of the Code of Civil Procedure (Act VII of 1859) should now be read as applying to Order II, rule 6 of Act V of 1908—Vide s. 158 of that Act.

† This reference should now be read as referring to the code of Criminal Procedure (Act V of 1898)—See s. 3 (1) of the Act.

‡ In Bengal for the words “a fee of eight annas” read “a fee of one rupee”—vide Ben Act IV of 1922 s. 3.

- i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.
- ii. [*Repealed by the Repealing and Amending Act (XII. of 1891)*]
- iii. Written statements called for by the Court after the first hearing of a suit.
- iv. [*Repealed by the Cantonments Act (XIII. of 1889).*]
- v. Plaints in suits tried by Village Munsifs† in the Presidency of Fort St. George.
- vi. Plaints and processes in suits before District Panchayats in the same Presidency.
- vii. Plaints in suits before Collectors under Madras Regulation XII. of 1816.
- viii. Probate of a will, letters of administration, "and, save as regards debts and securities, a certificate under Bombay Regulation VIII. of 1827,"‡ where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees [two thousand rupees§]
- ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.
- x. Application relating to a supply for irrigation of water belonging to Government.
- xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.
- xii. Application for service of notice of relinquishment of of land, or of enchancement of rent.
- xiii. Written authority to an agent to distrain.
- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a

† See the Madras villages Courts Act (1. of 1889).

‡ The words quoted have been substituted for the word "and certificate mentioned in the First Schedule to this Act annexed, No. 12," by the Succession Certificate Act (VII. of 1889), s. 13. (2).

§ In Bengal for the words "one thousand rupees" read "two thousand rupees" vide Ben. Act—IV of 1922.

withness or other person to attend, either to give evidence, or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

- xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise.
- xvi. Petition, application, charge or information respecting any offence when presented, made, or laid to or before a police officer or to or before the heads of villages* or the village-police† in the territories respectively subject to the Governors in Council of Madras and Bombay.
- xvii. Petition by a prisoner or other person in duress or under restraint of any Court or its officers.
- xviii. Complaint of a public servant (as defined in the Indian Penal Code) a municipal officer, or an officer or servant of a railway Company.
- xix. Application for permission to cut timber in Government forests or otherwise relating to such forests.
- xx. Application for the payment of money due by Government to the applicant.
- xxi. Petition of appeal against the chaukidari assessment under Act No. XX. of 1856, or against any municipal tax.
- xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes‡
- xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No II of 1869 (*to ascertain, regulate, and record certain tenures in Chutia Nagpur*).
- xxiv.§ Petitions under the Indian Christian-Marriage Act, 1872, sections 45 and 48.||

* See Mad Regs. XI of 1816 and IV of 1821 s. 6.

† See Bombay Village Police Act (VIII of 1867) ss 14, 15 and 16.

‡ See now the Land Acquisition Act (I of 1894).

§ This clause has been substituted for the original by the Indian Christian Marriage Act (XV of 1872) s 2. The original clause ran as follows : petitions under the 14th and 15th of Vict. ch. 40 (*an Act for Marriage in India*) s. 5, or under Act No. V of 1852 s 9.

|| For further exceptions see Notification No 4650, dated Sept. 10, 1889 in Appendix p. 74.

NOTES.

Clause (iii)—A written statement in which a set off is claimed is chargeable with court-fee. (10 C. W. N. 199 ; But see 8 C. W. N. 174). Where defendant does not allege any definite sum to be due to him and does not pray for passing any decree therefor but merely pleads that he is entitled to get from the plaintiff damages arising out of the transaction on which plaintiff's claim is based it is not chargeable with court-fee. 85 P. R. 1908.

Clause (viii)—The exemption from liability to pay Court-fees provided in this clause applies only in cases where the gross value does not exceed one thousand or two thousand rupees as the case may be—17 C. W. N. 21 ; but see 40 A. 279 when the estate is held to be exempted from court-fee if the net value is less than Rs 1000—40 A. 279.

Clause (xvii)—A petition of appeal presented by a legal practitioner on behalf of a prisoner in gaol need not bear a Court-fee stamp. 14 N. L. R. 77 = 43 Ind. Cas. 158 = 19 C. L. J. 494.

No Court-fee is leviable on the memorandum of appeal against an order rejecting an application by a judgment debtor, whilst in custody to be declared an insolvent. 10 C. 61.

Copies of documents for purpose of appeal in criminal cases is not exempted from payment of Court-fees. 6 Mad. Ap. H. C. R 12.

CHAPTER IIIA.*

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

19A. Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid to high^a a court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority "for the local area"[†] in which the probate or letters has or have been granted.

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation.

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

- (a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled ;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon ; and

* This chapter has been inserted by the probate and administration Act (XII. of 1875) s. 6.

† The words quoted were substituted for the words "of the province" by Act (X of 1901) s. 3.

- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

NOTES.

Vide. 14 Ind. Cas. 804.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But, when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19C. Whenever* a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, indential with or including the property to which the former grant relates.

NOTE.

Scope—No further Court fee is leviable on a subsequent grant of letter of administration under S. 229 of the Indian Succession Act, in respect of an unadministred portion of the estate, although the value of the property might have increased in the meantime. 4 L. B. R. 255. See also 1 S. L. R. 117. This section merely means that when fees have already been paid in respect to the whole or part of the property comprised in the estate of a deceased person no fees shall be payable on the grant of a fresh probate

* Here the word "such," repealed by the Repealing and Amending Act (XII, of 1891), has been omitted.

of a will or letters of administration of the estate of the same person e.g. when probate is revoked or a portion of an estate remains unadministered. 5 P. L. J. 36=54 Ind. Cas. 703.

Full fee chargeable under this Act—as stated in this section, is to be determined by reference to the point of time when the grant of probate is made. The expressions “under this Act” and “under the same act” in this section refer to the Court Fees Act of 1870, and not the subsequent Act amending the Court Fees Act 22 C. L. J. 370.

19D. The probate of the will, or the letters of administration of the effects, of any person deceased, heretofore or hereafter granted, shall be deemed valid and available by his executors administrators for recovering, transferring, or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially, as a trustee, not withstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Scope—Property held in trust not beneficially or with general power to confer a beneficial interest is exempt from *advalorem* fee. The exemption of trust estates from the payment of *advalorem* Court fee is not conditional on the circumstances that there had been a previous grant of Probate or letters of Administration on which a Court fee had been paid. The exemption is referable to the character of the property and not to the procedure adopted (29 B. 161, 23 C. 980, 7 B. L. R. O. C 57, 12 B. L. R. App 39 but see 27 B. 140)

Property belonging to the joint Hindu family—A will was propounded for probate, whereby the testator devised the joint family property to his minor son. Exemption was claimed on the ground that the deceased was only a trustee of such property. Held that the whole of the property was liable to pay probate duty, inasmuch as the parties claiming under the will must not go behind the will. 39 B. 245 ; See also 5 P. L. J. 510 but see 23 C. 980.

19E.* Where any person, on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court fee thereon, the Chief Controlling Revenue-Authority “for the local area”† in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value, and of the further penalty, if the probate or letters is or are produced within one

* As to power of Chief Controlling Revenue-Authority to remit the whole or part of any penalty or forfeiture payable under s. 19E, see the Probate and Administration Act (VI. of 1889), s. 20 (2).

† The words quoted were substituted for the words of the province by Act (X. of 1889) s. 3. *

year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

NOTES

Scope—This section contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. The section further contemplates that the estimated value of the estate is less than what the value afterwards proved to be. Where there is no determination of value by the Probate Court this section has no application. 23 C. J. 375, 1896 P. J 751.

19F. In the case of letters of administration on which too low a court-fee has been paid at first, the said authority shall not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law, to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained,

Administrator to give proper security before letters stamped under section 19E.

19G.† Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months.....§ after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the court-fee which ought to have

Executors &c., not paying full court-fee on probates, &c., within six months after discovery of under-payment.

† As to recovery of penalties or forfeitures under s. 19G see the Probate and Administration Act (VI. of 1889 s. 20 (1).

§ Here the words and figures "after the first day of April 1875" or repealed by Repealing and Amending Act (XII of 1891) have been omitted.

been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

NOTES.

This section is moulded on s. 43 of 55 Geo III ch. 189 and s. 122 of 56 Geo. III ch. 56. 22 C. L. J. 375.

Notice of applications for probate or letters of administration to be given to Revenue-authorities and procedure thereon.

19H.* (r) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority 'of the local area in which the High Court is situated.'†

(3) The collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect, or cause to be inspected, and take or cause to be taken copies of the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent), and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property.

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory

* Ss. 19H, 19I, 19J and 19K have been inserted after 19G by the Court Fees Act Amendment Act (XI. of 1899) s. 2 the original s. 19H having since been repealed by the Guardians and Wards Act (VII of 1890) s. 2 and Sch.

† The words quoted were substituted for the words "of the province" by Act (X of 1901) s. 2.

required by the section 277 of the Indian Succession Act 1865,* or, as the case may be by section 98 of the Probate and Administration Act, 1881†

(5) The Court, when so moved have aforesaid, shall hold or to cause to be held an inquiry accordingly and shall record a finding as to the true value as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purpose of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission) and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final but shall not bar the entertainment and disposal by the Chief Controlling Revenue-Authority of any application under section 19E.

(8) The local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

NOTES.

Costs of enquiry.—It is not stated by whom the cost of the enquiry should be borne. It is the duty of the court to hold the enquiry and if possible to save further expense. 6 C. W. N. 898

Clause (4)—The six months provided in (4) runs from the lodging of an inventory as required by S. 98 of the Probate and Administration Act, and no inventory satisfies the Statutory requirement which does not contain a full and true estimate of all the property in possession". 18 C. W. N. 153= (P. C.=41 C. 556 (P. C))

191.† (1) No order entitling the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

* Act X of 1866.

† Act V of 1881.

‡ See foot-note (*), on p. 923.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

19J.* (1) Any excess fee found to be payable on an inquiry Recovery of penalties, held under section 19H, sub-section (6), and *&c.* any penalty or forfeiture under section 19G, may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue-Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E, or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probates or letters of administration.

19K.* Nothing in section 6 or section 28 shall apply to probates or letters of administration.

CHAPTER VI.

PROCESS-FEES.

Rules as to costs of processes.

20†. The High Court shall, as soon as may be, make rules‡ as to the following matters—

* See foot-note on page 923.

† This section is not in force in Burma—Vide Bm. Act I of 1910. s. 2.

‡ As to the power to make rules and prescribe fee for processes in Lower Burma, see the Lower Burma Courts Act (XI. of 1889), ss. 89 and 91 now see Act (VI of 1900). As to the power of the judicial Commissioner to make rules and regulate the fees to be paid for civil processes in Upper Burma, see the Upper Burma Civil Courts Regulation (I. of 1896), s. 30 (1) (a). As to the power of the Bombay High Court to prescribe fees for processes issued by courts constituted under the Bombay Civil Courts Act (XIV. of 1869), see the section as amended by s. 2 of the North-Western Provinces Rent Act (XIV. of 1886) now see N-W P. Tenancy Act (II. of 1901).

As to power of the Chief Commissioner of British Baluchistan to make rules and prescribe fees, see the British Baluchistan Criminal Justice Regulation (VII of 1895), s. 20 (1) (a), and the British Baluchistan Civil Justice Regulation (IX. of 1896), s. 92(a).

For notifications issued under the powers conferred by this section in—

- (1) Bombay, see Bombay List of Local Rules and Orders, Vol. 1, Ed. 1896, pp. 36 and 37;
- (2) Burma, see *Burma Gazette*, 1898, Pt. 1., P. 14;
- (3) Madras, see Madras List of Local Rules and Orders, Vol. 1., Ed. 1898, pp. 18 and 19 ;
- (4) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Order, and Ed. 1894 p. 33,
- (5) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 11.

- i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil "and Revenue"* Courts established within the local limits of such jurisdiction;
- ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without a warrant ; and
- iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions shall, after being confirmed by the Local Government†, be published in the local official Gazette and shall thereupon have the force of law.

Confirmation and publication of rules,

Until such rules shall be so made and published, the fees now leaviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leaviable under this Act.

NOTES

The High Court has no power to relax the processes for rules framed by it in accordance with the provisions of this Act.—26 C. 124=3 C. W. N. 82.

A Commission, issued to an answer to make local investigation, is not a process within the meaning of this section 17 C. 281.

21.† A table in the English and Vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Table process-fees.

Number of persons in District and Subordinate Courts.

22.‡ Subject to rules§ to be made by the High Court, and approved by the Local Government and the Governor-General of India in Council,

* In Punjab, the words quoted in s. 20, cl. i., have been repealed by the Punjab Land Revenue Act (XVII. of 1887).

† Certain words repealed by Act—38 of 1920 have been omitted.

‡ Section 21, 22 and 23 are not in force in Burma—Vide Burma Act I of 1910 s. 2.

§ For rules made under the powers conferred by this section in—

Bombay, see Bombay List of Local Rules and Orders, Vol. 1., Ed. 1896, p. xxv. ;

Madras, see Madras List of Local Rules and orders, Vol. 1., Ed. 1898, p. 19 ;

N. W. P. and Oudh, see N.-W.P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 34 ;

— Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 11.

every district Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto ;

and, for the purposes of this section, every Court of Small Causes established under Act No. XI. of 1865* (to *consolidate and amend the law relating to Courts of small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in
Provincial Small Cause
Courts

Causes established under Act No. XI. of 1865* (to *consolidate and amend the law relating to Courts of small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

Note—vide 22 W. R. Cir . 9.

23.† Subject to rules‡ to be framed by the Chief Controlling Revenue Authority, and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a district shall fix, and from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

Number of peons in
Revenue Courts.

Revenue Authority, and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a district shall fix, and from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

Note—vide 22 M 494.

24. [*Process served under this Chapter to be held to be process within the meaning of the Code of Civil Procedure.*] Repealed by the Repealing and Amending Act (XII. of 1891).

CHAPTER V.

OF THE MODE OF LEVYING FEES.

25. All fees referred to in section 3 or chargeable under this Act, shall be collected by stamps.

Collection of fees by
stamps.

* The reference to Act XI. of 1865 should now be read as made to the Provincial Small Cause Courts Act (IX. of 1887), s. 2 (2) and (3).

† In the Punjab, s. 23 has been repealed—See the Punjab Land Revenue Act (XVII. of 1887).

‡ For rules framed under the powers conferred by this section in—
Madras, see Madras List of Local Rules and Orders, Vol. 1., Ed. 1898 p. xxv. ;

Central Provinces, see Central Province List of Local rules and Orders, Ed. 1896, p. xi.

Assam, see Assam Manual of Local Rules and Orders, Ed. 1893, p. x.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as "Local Government"* may by notification in "the Local Official Gazette"† from time to time direct.†

Stamps to be impressed or adhesive.

Note.—Vide 27A. 406, 19B. 145.

Rules for supply, number, renewal and keeping of accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act,
- (b) the number of stamps to be used for denoting any fee chargeable under this Act.
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping of accounts of all stamps used under this Act.

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

Note.—Vide 16W. R. 152.

Stamping documents inadvertently received.

28. No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped.

But, any such document is, through mistake or inadvertence, received, filed or used in any Court or office, without being properly stamped the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same, and every proceeding relative thereto, shall be as valid as if it had been properly stamped in the first instance.

NOTES.

Scope—Clause (i) is not applicable to memorandum of appeal insufficiently stamped. (1901) A. W. N. 21; see also in this connection 12 A. 129; 25 M. 380; 12 C. W. N. 1028; 14 M. L. J. 144.

Mistake or inadvertence—The word 'mistake' or the inadvertence in the section mean mistake or inadvertence on the part of the court on its officers and not that on the part of an appellant or his advisers. 12 A. 129; 28 A. 310; 4 A. L. J. 130. But a later full Bench of the Allahabad High Court held that this section is subject to no such limitation, 29 A. 749 (F B); 24 M. 331; 25 M. 380.

* The words within quotations have been substituted by Act 38 of 1920.

† For rules as to levy of court-fees by adhesive and impressed stamps, see *Gazette of India* 1883, Pt. I., p. 189.

Rejection of plaint etc.—This section does not override the provisions of the Civil Procedure Code and it is illegal on the part of a court to reject an insufficiently or improperly stamped plaint or memorandum of appeal, without giving the appellant time to supply stamp. 156 P. R. 1888 ; A. W. N. 1902, 183 ; 54 P. L. R. 1909 ; 27 P. L. R. 1917 ; 39 Ind. Cas. 766. A court is competent even to extend the time. 12 C. L. J. 62 ; 2 Ind. Cas. 1 But by filing an unstamped plaint limitation is not saved. 36 P. R. 1900 ; 28 A. 310 ; 27 A. 411 ; A. W. N. (1904) 133. Difficiency can be made good even in appeal. 14 M. L. J. 144. 1902 A. W. N. 153.

Limitation—Presentation of insufficiently stamped plaint.—Making up of duty subsequent to the period of limitation for the suit—validity.—Vide 123 P. R. 1907 ; 32 M. 305 ; 19 C. 747 ; 27 C. 814 ; 15 A. 65 ; 1900 P. L. R. 189.

Advalorem court fee on the value of the appeal should be paid on the memorandum of appeal from an order refusing an application for an order absolute under S-89 of the Transfer of Property Act. 12 C. W. N. 10 28.

Revenue officer—under this section a Revenue officer has the power to direct on revision the payment of court fee and to order that the plaint improperly stamped be properly stamped 22 C. L. J. 57.

29. Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Amended document.

NOTES

Whereby amending the plaint, a fresh suit is brought this section does not exempt from payment of Court Fees. P. R. 132 of 1892. See 13 A. W. N. 220 where opportunity was given to the plaintiff to amend the plaint.

30. No document requiring a stamp under this Act shall be filed or acted upon any proceeding in any court or office until the stamp has been cancelled.

Cancellation of stamp.

Such officer as the court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

NOTE.

Where a plaint is returned by a Court for presentation to the proper Court, the Court to which the plaint is presented thereafter is bound to give credit for the fee levied by the Court that returned the plaint. 21 M. L. J. 533 (P. B.)—10 Ind. Cas. 201

CHAPTER VI.

MISCELLANEOUS.

31. i. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

Repayment of fees paid
on applications to Criminal
Courts.

ii. In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraph, of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

NOTES.

Where a person admitted the advance made to him and agreed to repay it and has repaid it, it is not competent to the magistrate to make him pay to the complainant the court fee paid on the complaint petition. 33 B. 22.

An order under this section directing the accused who was convicted of a non-cognizable offence, to repay to the complainant the fee paid by him on the complaint is no part of the sentence passed on the accused for the offence. On appeal against such conviction it is not competent to the appellate court to set aside the order under this section. 31 M. 547.

A Criminal Court can levy from the accused the court fees paid by the complainant. This section is not modified by s. 545 of the Criminal Procedure Code. 24 M. 305.

32. [*Amendment of Act VIII. of 1859 and Act IX of 1869.*]
Repealed by the Repealing and Amending Act (XII. of 1891).

33 Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Admission in criminal cases
of documents for which pro-
per fees has not been paid.

34.* (1) The Local Government may, from time to time, make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazettee, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

NOTES

Exchange—A mukhtar who has purchased a court fee stamp of 8 annas for a client, and not having any use of it, has transferred it to another client who promised to return another stamp of equal value when the vendor arrived in court has not sold a stamp within the meaning of s. 34 of the Court fees Act and cannot be convicted under that section. 30 C. 921=7 C. W. N. 704.

35. "The local Government" ‡ may from time to time by notification† "in local official Gazettee"‡ reduce or remit, in the whole or any part of "the territories under its administration"‡ all or any of the fees mentioned in the first and second schedules to this Act annexed,

and may, in like manner, cancel or vary such order.

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

* S. 34 has been substituted for the original by the Repealing and Amending Act (XII, of 1891).

† For notification No. 4650 dated September 10, 1889 as amended and added to by subsequent notifications, see appendix.

‡ The words within quotations have been substituted by Act 38 of 1920.

SCHEDULE I.

Ad-valorem Fees.

NUMBER.		PROPER FEE.
1. Plaint, "Written statement pleading a set off, or counter claim," or memo- randum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court, except those mentioned in section 3.*	When the amount or value of the subject-matter in dispute does not exceed five rupees ...	Six annas.
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees up to one hundred rupees ...	Six annas.
	When such amount or value exceeds one hundred Rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	When such amount or value exceeds one thousand rupees for every one hundred rupees or part thereof, in excess of one thousand rupees up to five thousand rupees,	Five rupees.
	When such amount or value exceeds five thousand rupees for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees up to ten thousand rupees ...	Ten rupees.
	When such amount or value exceeds ten thousand rupees for every five hundred rupees or part thereof in excess of ten thousand rupees up to twenty thousand rupees ...	Fifteen rupees.

* To ascertain the proper fee leviable on the institution of a suit see the Table annexed to this schedule,

† The words quoted are inserted by Act V of 1908 Sch. IV.

SCHEDULE I—(continued).
Ad-valorem Fee—(continued).

NUMBER.		PROPER FEE.
	<p>When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees, up to thirty thousand rupees.</p>	Twenty rupees.
1. <i>Plaint etc.—contd.</i>	<p>When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees.</p>	Twenty rupees.
	<p>When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees ...</p> <p>Provided that the maximum fee leviable on a <i>plaint or memorandum of appeal</i> shall be three thousand rupees.</p>	Twenty-five rupees.
1. <i>Plaint "written statement pleading a set off or counter claim" or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court, except those mentioned in section 3.†—(contd).</i>	<p>When the amount or value of the subject matter in dispute does not exceed seventy five rupees, for every five rupees or part thereof of such amount in value,</p> <p style="text-align: center;">and</p> <p>When such amount or value exceeds seventy five rupees, for every five rupees part thereof, in excess of seventy five rupees, up to one hundred rupees.</p>	<p>Six annas.</p> <p>Eight annas.</p>

* The words within quotations are inserted by Act of 1908.

† In Bengal Art I of the first Schedule has been replaced by this Article Vide Ben, Act IV. of 1922.

NUMBER.		PROPER FEE
[Plaint, written statement pleading a set-off or Counter claim or memorandum of appeal, not otherwise provided for in this Act] or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3*	<p>and</p> <p>When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof in excess of one hundred rupees, up to one hundred and fifty rupees,</p>	One rupee ten annas
	<p>and</p> <p>When such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof up to one thousand rupees,</p>	One rupee two annas.
	<p>and</p> <p>when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, upto seven thousand five hundred rupees,</p>	Seven rupees eight annas.
	<p>and</p> <p>when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, upto ten thousand rupees,</p>	Fifteen rupees.
	<p>and</p> <p>when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, upto twenty thousand rupees,</p>	Twenty two rupees eight annas.
	<p>and</p> <p>when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, upto fifty thousand rupees,</p>	Thirty rupees.

NUMBER.		PROPER FEE.
1. Plaint etc.—contd.	<p style="text-align: center;">and</p> <p>when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.</p> <p>Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees</p>	<p>Thirty-seven rupees eight annas.</p>

NOTES

Plaint—An application for the winding up, by the Court, of the business of a firm after termination of partnership, is essentially a plaint and must be paid for in fees at the same rate as any other plaint for an account extending to a like amount of valuation. 7 B. 535.

A Suit for cancellation of an agreement to sell must bear an *advalorem* Stamp—15 M. 294.

A Suit for the partition of joint family property, where the plaintiff is in joint possession with the other co-perceners, the court fee is to be fixed by this article. 8 Ind. Cas. 512.

Set off—Where a written statement pleaded a set-off within the meaning of Art I Sch. 1 of the Court-fees Act and omitted to pay the requisite Court fees, the Court can neither go into the question of set off nor make an order for payment of additional Court-fees as no fee at all had been paid—35 Ind. Cas. 957.

The deduction which a lessee can make legally is not in the nature of set off, it is payment to land lord 12 C. L. J. 351 See also, 27 Ind. Cas. 320 where statement was held to be not counter claim.

Memorandum of appeal—In an appeal in a pre-emption case, in which the appellant asks the Court to reduce by a certain sum, the amount payable by him, under the order of the first Court, that sum represents the subject matter of his appeal. 76 P. R. 1913.

In a case where the whole subject matter of the suit is also the subject matter of appeal, the amount or value of the subject matter of appeal is nothing more than the value of the property which the plaintiff is seeking to recover and possession of which the defendant is seeking to retain. 32 Ind. Cas. 121.

Where Execution of a decree obtained against a firm is refused against a partner, an appeal against such order must be levied with court-fee under this article 35 Ind. Cas. 429.

Order 20, rule 12 C. P. C.—An appeal from a final decree under this order is chargeable with *advalorem* Court—Fee. 14 L. W. 730.

* Vide note a page 933.

Order 34 rule 5.—An appeal from this order requires *advalorem* Court fees. 35 A. 476 (F. B.) ; 57 Ind. Cas. 579=22 Bom. L. R. 811.

Order 34, rule 6.—An order refusing to make a decree under this order is a decree and an appeal from such order requires *advalorem* Court fees—16 A. L. J. 438.

Mortgage—In the case of appeals or cross objections in suits for redemption or for fore closure, in all cases whether a decree for interest has been made in them or not, in which the Court fee declared by the court due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross—objection should be valued and future interest should not be taken into account. The effect of this is that in original appeals the Court-fee should be levied on the sum due at the date of original decree and in all second appeals it should be levied on the sum due at the date of the decree of the lower appellate Court. 3 Pat L. J. 443. See also 12 C. W. N. 1028; 30 A. 547

Where one of the defendants to a mortgage suits appeals on the ground that the properties in his possession were not liable for the debt. *Held*, that the appellant was bound to pay *advalorem* Court fee on the memorandum of appeal. 48 Ind. Cas. 535, See also 29 C. 473.

In a redemption suit where the lower appellate Court decreed the suit at a lower amount and the appellant in the second appeal prayed that the sum be increased to a higher amount, the Court fee should be paid on the difference 9 Ind. Cas. 676. See also 30 M. 96. In a suit for redemption and in appeals from these suits, the subject, matter of dispute, is the existence of the right to redeem, any question as to the amount payable as a condition of redemption is merely incidental to that right. (1914) M. W. N. 231; 20 M. L. J. 120.

Counter Claim—In a suit for possession of property the defendant pleaded first, that the plaintiff has no title, and secondly, that the plaintiff could not get possession without payment to the defendant of Rs. 80,000 the amount of dower due to her Plaintiff's suit was decreed. *Held* that the defendant, in appeal, should pay Court fees on the property. 36 A. 322.

The subject matter in dispute in a suit for Redemption of a mortgage is the right to redeem and any question as to the amount payable as the condition of redemption should be regarded as merely incidental to that right. In an appeal from the decree in such a suit, directing redemption on payment of the amount mentioned in the plaint when the defendant contests the right of redemption or claims in the alternative a larger amount than that mentioned in the plaint, the Court fee payable by him on memorandum of appeal is the same as was paid by the plaintiff on his plaint. 20 M. L. J. 120; 29 M. 367.

No revision lies in matters of Court fees, there being no material irregularity S.O. 1349.

An appeal from a decree in accordance with an award should be stamped with *advalorem* Court fee. A. W. N. 1907, 177 ; 33 C. 11

Appeal from an order under S. 331 C. P. Code should be stamped *advalorem* Court fee, 10 B. 238 .

Appeal from an order under S. 230, Act VIII of 1859 should be stamped with *advalorem* Court fee. 18 P. R. 1875

Where relief is granted partially the memorandum of appeal should be stamped with *advalorem* Court fee on the difference. 19 G. 272

Number.		Proper Fee.
2. Plaintiff in a suit for possession under "the Specific Relief Act 1877, s. 9" [†]	...	{ A fee of one-half the amount prescribed in the foregoing scale.
3. [Repealed by Act VIII of 1871.]	...	
4. Application for review of Judgment if presented on or after the ninetieth day from the date of the decree.	...	{ The fee leviable on the plaint or memorandum of appeal.

NOTES

Holiday—The apparent institution of S. 14 is to require full stamp in every case of delay after the eighty ninth day from the date of the decree. Hence an application for review of judgment, presented on the day the Court was reopened after the vacation and during which ninety days prescribed for its presentation had expired is governed by this article. 9 M. 134; 7 C. P. L. R. 111; P. R. 39 of 1879; see also 9 C. L. R. 429.

Interlocutory orders—Neither this article or article 5 refers to interlocutory orders but they refer to judgments ending in decrees. 6 A. L. J. 151=31 A. 252.

Forma pauperis—When an application for review is presented in suit in *forma pauperis*, that application like the plaint in suit is not liable to any Court fee 20 A. 410. But if he has not been declared a pauper in any of the earlier stages he must file the usual stamp. 91 P. R. 1895.

An application for a new trial in a small cause Court in the mofussil does not fall under this article—14 W. R. 249.

The proper fee for an application for review of judgment is the fee leviable on the plaint or memorandum of appeal in the suit in which the judgment sought to be reviewed was passed whether the review affects the whole or a part of the decree—31 A. 294=6 A. L. J. 215; see also A. W. N. 1898, 12; 3. C. W. N. 292. But see 4 B. 26.

In computing the period of 89 days the applicant cannot deduct the time which may have been spent in obtaining a copy of the judgment. 2 O. C. 302.

* The words or memorandum of appeal repealed by the Court Fees Act Amendment Act (XX of 1870) have been omitted.

† The words quoted have been substituted by the Repealing and Amending Act (XII. of 1891) for the words "Act No. XIV of 1859 (to provide for the limitation of suits) section 15"

Number.		Proper Fee.
Application for review of judgments if presented before the fortieth day from the date of the decree.	... ..	One-half of the fee leviable on the plaint or memorandum of appeal
<i>Insufficiently stamped</i> —An insufficiently stamped application for review stands on the same footing as an insufficiently stamped plaint, and it will be considered as made, for purposes of limitation, only on the day the deficiency in the stamp is supplied. 12 A. 57.		
Copy or translation of a judgment or order not being or having the force of, a decree	When such judgment or order is passed by any Civil Court, other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—	
	(a.)—If the amount or value of the subject-matter is fifty or less than fifty rupees ...	Four annas [six annas]*
	(b.)—If such amount or value exceeds fifty rupees ...	Eight annas. [Twelve annas]*
Copy of a decree or order having the force of a decree.	When such judgment or order is passed by a High Court ...	One rupee. [One rupee eight annas]*
	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a.)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is less than fifty rupees ...	Eight annas.
	(b.) If such amount or value exceeds fifty rupees	One rupee.
	When such decree or order is made by a High Court	Four rupees.

As to application for review of judgment see the Code of Civil Procedure 7 of 1908) s. 114 ; O. 47 r. 1.

So far as the Presidency of Bengal is concerned for the words "four annas" in clause (a) in the second column read the words "Six annas" in the 3 for the words "Eight-annas" opposite the 1st item in clause (b), the "Twelve annas" should be substituted, and the words "One rupee" opposite the second item the words "One rupee Eight-annas" shall be substituted—
Bengal Act [IV of 1922.]

NOTES

Notes of judgment furnished to the parties under rules of the Small Cause Courts fall under this Article—6 M. H. C. App. 23.

Number.		Proper Fee.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1879,* when left by any party to a suit or proceeding in place of the original withdrawn.	(a)—When the stamp duty chargeable on the original does not exceed eight annas ... (b.)—In any other case ...	The amount of the duty chargeable on the original. Eight annas.

General power of attorney—whether its copy produced in Court requires Court-fees of annas eight vide 9 P. R. 1918.

See also 11B. 526.

9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or Copy of any account, statement, report, or of the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. [<i>Repealed by the Guardians Wards Act (VIII of 1890).</i>]		
11.† Prabate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of prabate or letters is made exceed one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.

* See now the Indian Stamp Act (11. of 1899). The reference originally was to Act XVIII. of 1869.

† No. 11 has been substituted by Act VII of 1910

Number.		Proper† Fee.
	<p>When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees.</p> <p>When such amount or value exceeds fifty thousand rupees.</p>	<p>Two and one-half per centum on such amount or value.</p> <p>Three per centum on such amount or value.</p>
Probate etc.—contd.	<p>Provided that, when after the grant of the certificate under the succession certificate Act 1889* or under the Regulation of the Bombay Code No VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p>	
<p>11 † Probate of a will or letters of administration with or without will annexed.</p>	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceed two thousand rupees, but does not exceed ten thousand rupees.</p> <p>and</p> <p>when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of ten thousand rupees,</p> <p>and</p> <p>when such amount or value exceeds fifty thousand rupees but does not exceed a lakh of rupees for the portion of such amount or value which is in excess of fifty thousand rupees.</p> <p>and</p>	<p>Two per centum on such amount or value.</p> <p>Three per centum on such amount or value.</p> <p>Four per centum on such amount or value.</p>

* Act VII of 1889.

† This old article has been substituted by this article by Ben. Act IV of 1922.

Number.		Proper Fee.
Probate etc.—contd.	When such amount or value exceeds a lakh of rupees for the portion of amount or value which is in excess of a lakh of rupees.	Five per centum on such amount or value.

NOTES

Amount or value of property—For purposes of this article the expression “the amount or value of the property signifies the net value obtained by the deduction of the debt and expenses from the gross value.” 22 C. L. J. 160. The value of an annuity is to be determined by its market value. 1B. 118 See also 24 M, 241; 6 N. W. P. 214; 23 C. 577; 3 C. 736; 8 B. L. R. App. 43.

Property in respect of which the grant is made—The Court fee is payable on such property which are situate in British India. 21 B. 139. See also 1 C. 168; 4 C 725. Power of appointment given to testatrix by will of her husband is property within the meaning of this article. 25 M. 515 But see, 12 B. L. R. App. 138.

Uncertainty—The uncertainty of recovering a debt is no ground for reducing the proportionate duty payable thereon for probate. 24 C. 567; 13 B. L. App. 244. 21 W. R. 397.

Where married parties held property under the Buddhist law or under the Code Napoleon and one of them dies, only one half of the property is chargeable with duty—20 C. 575; 50 Ind. Cas. 545.

No stamp duty is payable on probate granted to a second executor. 15 W. R. 496. See also 6 B. L. R. Ap. 189. But if no duty was originally paid in that case ad valorem duty should be paid. 3 C. 733=2 C. L. R. 436, See also 6 B. L. R. App. 137; 21 W. R. 246 N.

Trust property—The term property does include trust property. 11 B. L. R. Ap. 39; 14 B. L. R. 184, but see 7 B. L. R. 57.

12 ^a Certificate under the Succession certificate Act, 1889.	I any case ...	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
---	----------------	--

* Nos. 11, 12, and 12A have been substituted, by the Succession certificate Act (VII. of 1889), s. 13 (1), for Nos. 11 and 12 as originally enacted.

Number.	
Certificate etc.—contd	.. ...
[12* Certificate under the succession certificate Act, 1889.]	<p>When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, but does not exceed ten thousand rupees.</p> <p>and</p> <p>When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for portion of such amount or value which is in excess of ten thousand rupees.</p>

* The old article 12 has been substituted by the new by Ben. Act IV, of 1922.

	Proper Fee.
<p>and when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees,</p> <p>and when such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.</p>	<p>Four per centum on such amount or value and six per centum on such amount or value of any debt or security to which the certificate is extended under section 10 of this Act.</p> <p>Five per centum on such amount or value and seven-and-a-half per centum on such amount or value of any debt or security to which the certificate is extended under section 10 of the Act.</p>

56; 5 M. H. C. R (Ap) 45, 5 C. L. R. 368.

<p>(1). As regards debts and securities.</p>	<p>The same fee as would be payable in respect of a certificate under the succession certificate Act 1889† or in respect of an extension of such a certificate as the case may be.</p>
<p>(2) As regards other property in respect of which the certificate is granted when the amount or value of such property exceeds one thousand rupees but does not exceed ten thousand rupees ; Where such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees. When such amount or value exceeds fifty thousand rupees.</p>	<p>Two per centum on such amount or value.</p> <p>Two and one-half per centum on such amount or value. Three per centum on such amount or value.</p>

as been substituted for the original No 12 by Act VII entires in Cols 2 and 3 of No 12 A by Act VII of

Number.		Proper Fee.
13.* Application to the High Court of Judicature at Lahore† for the exercise of its jurisdiction under section 70 of the Punjab Courts Act 1884, as amended by the Punjab Courts Act, 1899, or to Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under section 84 of the Punjab Tenancy Act 1887.	<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.</p> <p>When such amount or value exceeds twenty-five rupees.</p>	<p>Two rupees.</p> <p>The fee leviable on a memorandum of appeal.</p>
<p><i>Legislative Change</i>—It appears from Punjab Act—I of 1912 that art 13 of Schedule 11 of the Court fees Act—has been repealed and, as such should be omitted. But it appears from Act—18 of 1919 that that article is still in force.</p>		
14.‡ Application to the Chief Court of Lower Burma for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887.	<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.</p> <p>When such amount or value exceeds twenty-five rupees</p>	<p>Two rupees.</p> <p>The fee leviable on a memorandum of appeal</p>
15.§ Application to the Court of the Judicial Commissioner, Upper Burma, for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887, or section 14 of the Upper Burma Civil Courts Regulation 1896.	<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.</p> <p>When such amount or value exceed twenty-five rupees.</p>	<p>Two rupees.</p> <p>The fee leviable on a memorandum of appeal.</p>

* This number has been added by the Punjab Courts Act (XVIII of 1884) s. 71, as amended by the Punjab Courts Act (XXV. of 1899) s. 6 except the italicized words which have been added by Act IX. of 1900.

† The words within quotations have been inserted by Act 18 of 1919.

‡ The words and figures in the first column of No. 14 have been substituted for those inserted by the lower Burma Courts Act (XL of 1889), s. 84—See the lower Burma Courts Act (XI. of 1900), Sch. I., Pt. I.

§ No. 15 has been inserted by the Upper Burma Civil Courts Regulation (I. of 1896), s. 36.

SCHEDULE I.—(continued).

Table of Rates of Ad-valorem Fees leviable on the Institution of Suits.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A. P.
0	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0
70	75	5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 8 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 8 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 8 0
220	230	17 4 0
230	240	18 0 0
240	250	18 12 0
250	260	19 8 0
260	270	20 4 0
270	280	21 0 0
280	290	21 12 0
290	300	22 8 0
300	310	23 4 0
310	320	24 0 0
320	330	24 12 0
330	340	25 8 0
340	350	26 4 0
350	360	27 0 0

SCHEDULE I.—(continued.)

Table of Rates of *Ad-valorem Fees, &c.*—(continued).

When the amount or value of the subject- matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A. P.
360	370	27 12 0
370	380	28 8 0
380	390	29 4 0
390	400	30 0 0
400	410	30 12 0
410	420	31 8 0
420	430	32 4 0
430	440	33 0 0
440	450	33 12 0
450	460	34 8 0
460	470	35 4 0
470	480	36 0 0
480	490	36 12 0
490	500	37 8 0
500	510	38 4 0
510	520	39 0 0
520	530	39 12 0
530	540	40 8 0
540	550	41 4 0
550	560	42 0 0
560	570	42 12 0
570	580	43 8 0
580	590	44 4 0
590	600	45 0 0
600	610	45 12 0
610	620	46 8 0
620	630	47 4 0
630	640	48 0 0
640	650	48 12 0
650	660	49 8 0
660	670	50 4 0
670	680	51 0 0
680	690	51 12 0
690	700	52 8 0
700	710	53 4 0
710	720	54 0 0
720	730	54 12 0
730	740	55 8 0
740	750	56 4 0
750	760	57 0 0
760	770	57 12 0
770	780	58 8 0
780	790	59 4 0
790	800	60 0 0
800	810	60 12 0
810	820	61 8 0
820	830	62 4 0

SCHEDULE I.—(continued).

Table of rates of Advalorem Fees &c.—(continued).

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee.
Rs	Rs	Rs. A. P.
830	840	63 0 0
840	850	63 12 0
850	860	64 8 0
860	870	65 4 0
870	880	66 0 0
880	890	66 12 0
890	900	67 8 0
900	910	68 4 0
910	920	69 0 0
920	930	69 12 0
930	940	70 8 0
940	950	71 4 0
950	960	72 0 0
960	970	72 12 0
970	980	73 8 0
980	990	74 4 0
990	1,000	75 0 0
1,000	1,100	80 0 0
1,100	1,200	85 0 0
1,200	1,300	90 0 0
1,300	1,400	95 0 0
1,400	1,500	100 0 0
1,500	1,600	105 0 0
1,600	1,700	110 0 0
1,700	1,800	115 0 0
1,800	1,900	120 0 0
1,900	2,000	125 0 0
2,000	2,100	130 0 0
2,100	2,200	135 0 0
2,200	2,300	140 0 0
2,300	2,400	145 0 0
2,400	2,500	150 0 0
2,500	2,600	155 0 0
2,600	2,700	160 0 0
2,700	2,800	165 0 0
2,800	2,900	170 0 0
2,900	3,000	175 0 0
3,000	3,100	180 0 0
3,100	3,200	185 0 0
3,200	3,300	190 0 0
3,300	3,400	195 0 0
3,400	3,500	200 0 0
3,500	3,600	205 0 0
3,600	3,700	210 0 0
3,700	3,800	215 0 0
3,800	3,900	220 0 0
3,900	4,000	225 0 0

SCHEDULE I.—(continued.)

Table of Rates of Advalorem Fees &c.—(continued)

When the amount or value of the subject matter exceeds.	But does not exceed	Proper fee.
Rs.	Rs.	Rs. A. P
4,000	4,100	230 0 0
4,100	4,200	235 0 0
4,200	4,300	240 0 0
4,300	4,400	245 0 0
4,400	4,500	250 0 0
4,500	4,600	255 0 0
4,600	4,700	260 0 0
4,700	4,800	265 0 0
4,800	4,900	270 0 0
4,900	5,000	275 0 0
5,000	5,250	285 0 0
5,250	5,500	295 0 0
5,500	5,750	305 0 0
5,750	6,000	315 0 0
6,000	6,250	325 0 0
6,250	6,500	335 0 0
6,500	6,750	345 0 0
6,750	7,000	355 0 0
7,000	7,250	365 0 0
7,250	7,500	375 0 0
7,500	7,750	385 0 0
7,750	8,000	395 0 0
8,000	8,250	405 0 0
8,250	8,500	415 0 0
8,500	8,750	425 0 0
8,750	9,000	435 0 0
9,000	9,250	445 0 0
9,250	9,500	455 0 0
9,500	9,750	465 0 0
9,750	10,000	475 0 0
10,000	10,500	490 0 0
10,500	11,000	505 0 0
11,000	11,500	520 0 0
11,500	12,000	535 0 0
12,000	12,500	550 0 0
12,500	13,000	565 0 0
13,000	13,500	580 0 0
13,500	14,000	595 0 0
14,000	14,500	610 0 0
14,500	15,000	625 0 0
15,000	15,500	640 0 0
15,500	16,000	655 0 0
16,000	16,500	670 0 0
16,500	17,000	685 0 0
17,000	17,500	700 0 0
17,500	18,000	715 0 0
18,000	18,500	730 0 0

SCHEDULE I.—(continued).

Table of Rates of Ad-valorem Fees, &c.—(continued).

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
18,500	19,000	745 0 0
19,000	19,500	760 0 0
19,500	20,000	775 0 0
20,000	21,000	795 0 0
21,000	22,000	815 0 0
22,000	23,000	835 0 0
23,000	24,000	855 0 0
24,000	25,000	875 0 0
25,000	26,000	895 0 0
26,000	27,000	915 0 0
27,000	28,000	935 0 0
28,000	29,000	955 0 0
29,000	30,000	975 0 0
30,000	32,000	995 0 0
32,000	34,000	1,015 0 0
34,000	36,000	1,035 0 0
36,000	38,000	1,055 0 0
38,000	40,000	1,075 0 0
40,000	42,000	1,095 0 0
42,000	44,000	1,115 0 0
44,000	46,000	1,135 0 0
46,000	48,000	1,155 0 0
48,000	50,000	1,175 0 0
50,000	55,000	1,200 0 0
55,000	60,000	1,225 0 0
60,000	65,000	1,250 0 0
65,000	70,000	1,275 0 0
70,000	75,000	1,300 0 0
75,000	80,000	1,325 0 0
80,000	85,000	1,350 0 0
85,000	90,000	1,375 0 0
90,000	95,000	1,400 0 0
95,000	1,00,000	1,425 0 0
1,00,000	1,05,000	1,450 0 0
1,05,000	1,10,000	1,475 0 0
1,10,000	1,15,000	1,500 0 0
1,15,000	12,0,000	1,525 0 0
1,20,000	1,25,000	1,550 0 0
1,25,000	1,30,000	1,575 0 0
1,30,000	1,35,000	1,600 0 0
1,35,000	1,40,000	1,625 0 0
1,40,000	1,45,000	1,650 0 0
1,45,000	1,50,000	1,675 0 0
1,50,000	1,55,000	1,700 0 0
1,55,000	1,60,000	1,725 0 0
1,60,000	1,65,000	1,750 0 0
1,65,000	1,70,000	1,775 0 0

SCHEDULE I.—(concluded).

Table of Rates of Ad-valorem Fees, &c—(concluded).

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs	Rs	A. P
1,70,000	1,75,000	1,800	0 0
1,75,000	1,80,000	1,825	0 0
1,80,000	1,85,000	1,850	0 0
1,85,000	1,90,000	1,875	0 0
1,90,000	1,95,000	1,900	0 0
1,95,000	2,00,000	1,925	0 0
2,00,000	2,05,000	1,950	0 0
2,05,000	2,10,000	1,975	0 0
2,10,000	2,15,000	2,000	0 0
2,15,000	2,20,000	2,025	0 0
2,20,000	2,25,000	2,050	0 0
2,25,000	2,30,000	2,075	0 0
2,30,000	2,35,000	2,100	0 0
2,35,000	2,40,000	2,125	0 0
2,40,000	2,45,000	2,150	0 0
2,45,000	2,50,000	2,175	0 0
2,50,000	2,55,000	2,200	0 0
2,55,000	2,60,000	2,225	0 0
2,60,000	2,65,000	2,250	0 0
2,65,000	2,70,000	2,275	0 0
2,70,000	2,75,000	2,300	0 0
2,75,000	2,80,000	2,325	0 0
2,80,000	2,85,000	2,350	0 0
2,85,000	2,90,000	2,375	0 0
2,90,000	2,95,000	2,400	0 0
2,95,000	3,00,000	2,425	0 0
3,00,000	3,05,000	2,450	0 0
3,05,000	3,10,000	2,475	0 0
3,10,000	3,15,000	2,500	0 0
3,15,000	3,20,000	2,525	0 0
3,20,000	3,25,000	2,550	0 0
3,25,000	3,30,000	2,575	0 0
3,30,000	3,35,000	2,600	0 0
3,35,000	3,40,000	2,625	0 0
3,40,000	3,45,000	2,650	0 0
3,45,000	3,50,000	2,675	0 0
3,50,000	3,55,000	2,700	0 0
3,55,000	3,60,000	2,725	0 0
3,60,000	3,65,000	2,750	0 0
3,65,000	3,70,000	2,775	0 0
3,70,000	3,75,000	2,800	0 0
3,75,000	3,80,000	2,825	0 0
3,80,000	3,85,000	2,850	0 0
3,85,000	3,90,000	2,875	0 0
3,90,000	3,95,000	2,900	0 0
3,95,000	4,00,000	2,925	0 0
4,00,000	4,05,000	2,950	0 0
4,05,000	4,10,000	2,975	0 0
4,10,000	...	3,000	0 0

THE SCHEDULE.

Table of rates of ad-valorem fees leviable on the Institution of Suits.

See section 9 of the Bengal Court fees (Amendment) Act, 1922.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A
0	5	0 6
5	10	0 12
10	15	1 2
15	20	1 8
20	25	1 14
25	30	2 4
30	35	2 10
35	40	3 0
40	45	3 6
45	50	3 12
50	55	4 2
55	60	4 8
60	65	4 14
65	70	5 4
70	75	5 10
75	80	6 2
80	85	6 10
85	90	7 2
90	95	7 10
95	100	8 2
100	110	9 12
110	120	11 6
120	130	13 0
130	140	14 10
140	150	16 4
150	160	18 0
160	170	19 2
170	180	20 4
180	190	21 6
190	200	22 8
200	210	23 10
210	220	24 12
220	230	25 14
230	240	27 0
240	250	28 2
250	260	29 4
260	270	30 6
270	280	31 8
280	290	32 10
290	300	33 12
300	310	34 14
310	320	36 0
320	330	37 2

THE SCHEDULE—(Contd.)

Table of Rates of Advalorem Fee &c.—(contd.)

When the amount or value of the subject- matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A.
330	340	38 4
340	350	39 6
350	360	40 8
360	370	41 10
370	380	42 12
380	390	43 11
390	400	45 0
400	410	46 2
410	420	47 4
420	430	48 6
430	440	49 8
440	450	50 10
450	460	51 12
460	470	52 14
470	480	54 0
480	490	55 2
490	500	56 4
500	510	57 6
510	520	58 8
520	530	59 10
530	540	60 12
540	550	61 14
550	560	63 0
560	570	64 2
570	580	65 4
580	590	66 6
590	600	67 8
600	610	68 10
610	620	69 12
620	630	70 14
630	640	72 0
640	650	73 2
650	660	74 4
660	670	75 6
670	680	76 8
680	690	77 10
690	700	78 12
700	710	79 14
710	720	81 0
720	730	82 2
730	740	83 4
740	750	84 6
750	760	85 8
760	770	86 10
770	780	87 12
780	790	88 14

SCHEDULE I.—(continued).

Table of Rates of Ad-valorem Fees &c.—(continued.)

When the amount or value of the subject- matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A.
790	800	90 0
800	810	91 2
810	820	92 4
820	830	93 6
830	840	94 8
840	850	95 10
850	860	96 12
860	870	97 14
870	880	99 0
880	890	100 2
890	900	101 4
900	910	102 6
910	920	103 8
920	930	104 10
930	940	105 12
940	950	106 14
950	960	108 0
960	970	109 2
970	980	110 4
980	990	111 6
990	1,000	112 8
1,000	1,100	120 0
11,00	1,200	127 8
1,200	1,300	135 0
1,300	1,400	142 8
1,400	1,500	150 0
1,500	1,600	157 8
1,600	1,700	165 0
1,700	1,800	172 8
1,800	1,900	180 0
1,900	2,000	187 8
2,000	2,100	195 0
2,100	2,200	202 8
2,200	2,300	210 0
2,300	2,400	217 8
2,400	2,500	225 0
2,500	2,600	232 8
2,600	2,700	240 0
2,700	2,800	247 8
2,800	2,900	255 0
2,900	3,000	262 8
3,000	3,100	270 0
3,100	3,200	277 8
3,200	3,300	285 0
3,300	3,400	292 8
3,400	3,500	300 0

SCHEDULE I.—(continued.)

Table of Rates of Advalorem Fees &c.—(continued)

When the amount or value of the subject matter exceeds.	But does not exceed	Proper fee.
Rs.	Rs.	Rs. A.
3,500	3,600	307 8
3,600	3,700	315 0
3,700	3,800	332 2
3,800	3,900	330 0
3,900	4,000	337 8
4,000	4,100	345 0
4,100	4,200	352 8
4,200	4,300	360 0
4,300	4,400	367 8
4,400	4,500	375 0
4,500	4,600	382 8
4,600	4,700	390 0
4,700	4,800	397 8
4,800	4,900	405 0
4,900	5,000	412 8
5,000	5,100	420 0
5,100	5,200	427 8
5,200	5,300	435 0
5,300	5,400	442 8
5,400	5,500	450 0
5,500	5,600	457 8
5,600	5,750	465 0
5,700	58,00	472 8
58,00	5,900	480 0
59,00	6,000	487 8
6,000	6,100	495 0
6,100	6,200	502 8
6,200	6,300	510 0
6,300	6,400	517 8
6,400	6,500	525 0
6,500	6,600	532 8
6,600	6,700	540 0
6,700	6,800	547 8
6,800	6,900	555 0
6,900	70,00	562 8
7,000	7,100	570 0
7,100	7,200	577 8
7,200	7,300	585 0
7,300	7,400	592 8
7,400	7,500	600 0
7,500	7,750	615 0
7,750	8,000	630 0
8,000	8,250	645 0
8,250	8,500	660 0
8,500	8,750	675 0
8,750	9,000	690 0
9,000	9,250	705 0

SCHEDULE I.—(concluded).

Table of Rates of Ad-valorem Fees, &c—(concluded).

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A.
9,250	9,500	720 0
9,500	9,750	735 0
9,750	10,000	750 0
10,000	10,500	772 8
10,500	11,000	795 0
11,000	11,500	817 8
11,500	12,000	840 0
12,000	12,500	862 8
12,500	13,000	885 0
13,000	13,500	907 8
13,500	14,000	930 0
14,000	14,500	952 8
14,500	15,000	975 0
15,000	15,500	997 8
15,500	16,000	1,020 0
16,000	16,500	1,042 8
16,500	17,000	1,065 0
17,000	17,500	1,087 8
17,500	18,000	1,110 0
18,000	18,500	1,132 8
18,500	19,000	1,155 0
19,000	19,500	1,177 8
19,500	20,000	1,200 0
20,000	21,000	1,230 0
21,000	22,000	1,260 0
22,000	23,000	1,290 0
23,000	24,000	1,320 0
24,000	25,000	1,350 0
25,000	26,000	1,380 0
26,000	27,000	1,410 0
27,000	28,000	1,440 0
28,000	29,000	1,470 0
29,000	30,000	1,500 0
30,000	31,000	1,530 0
31,000	32,000	1,560 0
32,000	33,000	1,590 0
33,000	34,000	1,620 0
34,000	35,000	1,650 0
35,000	36,000	1,680 0
36,000	37,000	1,710 0
37,000	38,000	1,740 0
38,000	39,000	1,770 0
39,000	40,000	1,800 0
40,000	41,000	1,830 0
41,000	42,000	1,860 0
42,000	43,000	1,890 0
43,000	44,000	1,920 0

SCHEDULE I.—(continued).

Table of Rates of Ad-valorem Fees, &c.—(continued).

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A.
14,000	15,000	1,950 0
15,000	16,000	1,980 0
16,000	17,000	2,010 0
17,000	18,000	2,040 0
18,000	19,000	2,070 0
19,000	20,000	2,100 0
20,000	21,000	2,137 8
21,000	22,000	2,175 0
22,000	23,000	2,212 8
23,000	24,000	2,250 0
24,000	25,000	2,287 8
25,000	26,000	2,325 0
26,000	27,000	2,362 8
27,000	28,000	2,400 0
28,000	29,000	2,437 8
29,000	30,000	2,475 0
30,000	31,000	2,512 8
31,000	32,000	2,550 0
32,000	33,000	2,587 8
33,000	34,000	2,625 0
34,000	35,000	2,662 8
35,000	36,000	2,700 0
36,000	37,000	2,737 8
37,000	38,000	2,775 0
38,000	39,000	2,812 8
39,000	40,000	2,850 0
40,000	41,000	2,887 8
41,000	42,000	2,925 0
42,000	43,000	2,962 0
43,000	44,000	3,000 0
44,000	45,000	3,037 8
45,000	46,000	3,075 0
46,000	47,000	3,112 8
47,000	48,000	3,150 0
48,000	49,000	3,187 8
49,000	50,000	3,225 0
50,000	51,000	3,262 8

SCHEDULE I.—(continued).

Table of rates of Advalorem Fees &c.—(continued).

And the fee increases at the rate of thirty seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees for example .—

Rs.	Rs. A.
3,00,000	4,012 8
4,00,000	4,762 8
5 00,000	5,512 8
6,00,000	6,262 8
7,00,000	7,012 8
8,00,000	7,762 8
9,00,000	8,512 8
10,00,000	9,262 8
11,00,000	10,000 0

SCHEDULE II.

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application or petition.	<p>(a.)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;</p> <p>or when presented to any officer of land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;</p> <p>or when presented to any Municipal Commissioner [Or member of a District Board*] under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;</p> <p>or when presented to any Civil Court other than a principal Civil Court of original jurisdiction,† or to any Court of Small Causes constituted under</p>	<p>One anna (two annas)*</p>

* The words within brackets have been inserted by Ben. Act IV. of 1922, and which should be read in Bengal

† Here the words, "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859," have been omitted, having been repealed by the Cantonments Act (XIII. of 1889,) s. 2 and Sch.

SCHEDULE II.—(continued.)

Fixed Fees—(continued.)

NUMBER.		PROPER FEE.
1. Application or petition—(contd.)	<p>Act No. XI. of 1865 * or under Act No. XVI. of 1868, section 20, † or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;</p> <p>or when presented to any Civil, Criminal, or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board, or officer, or of any other document on record in such Court or Office.</p> <p>(b.)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, § arrest without warrant, and presented to any Criminal Court ;</p> <p>or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ;</p>	<p>One anna (two annas) ‡</p> <p>Eight annas. [In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases, twelve annas.] ‡</p>

* See now the Provincial Small Cause Courts Act (IX. of 1887), by which Act XI. of 1865 has been repealed.

† See now s. 25 of the Bengal, North-Western Provinces, and Assam Civil Courts Act (XII. of 1887.)

‡ The words within brackets have been inserted by Ben. Act IV. of 1922, and which should be read in Bengal.

§ See the Code of Criminal Procedure (Act V. of 1898,)

SCHEDULE II.—(continued.)

Fixed Fees—(continued.)

NUMBER.		PROPER FEE.
1. Application or petition—(contd.)	or to deposit in Court revenue or rent ;	
	or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	
	(c.)—When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act.	One rupee (one rupee eight annas)*
	(d.)—When presented to a High Court	
	* [(d.) i.—when presented to the High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order—	Two rupees.
	(a.)—When the value of the suit to which the order relates does not exceed Rs. 1,000.	Five rupees.
	(b.)—When the value of suit exceeds Rs. 1,000.	Ten rupees.
	(ii)—When presented to the High Court otherwise than under that section	Two rupees.

NOTES.

Application must be in writing—2 N. W. P. 418.

Application for a new trial in a Small Cause Court falls within sub-clause (a) of this article—7 B. H. C. A. C. 109.

* Read in Bengal the words within brackets instead of original words—Vide Ben. Act IV of 1922,

SCHEDULE II.—(continued.)

Fixed Fees—(continued.)

NOTES.

Stamp duty is not chargeable on an application by a witness for the return of a Document filed by him in obedience to summons. 15 W. R. 237.

Application for probate or letters of administration falls under this section. 15 W. R. 40 ; 51 M. L. J. 481.

An appeal against an order absolute for foreclosure or sale should be treated as an application under this Article. 14 C. P. L. R. 100.

Application by witnesses to have the document returned, filed by him does not require any stamp duty. 15 W. R. 237.

Application for copy of decree and judgment should be stamped under this Article. 7 W. R. 455.

Clause (b).—A petition for withdrawing a suit should be charged under this clause 8 M. 15 (F. B.) A petition for guardianship should be stamped under this section. P. R. 6, 1873 A petition for having a tenant ejected should be stamped under this clause. 2 B. L. R. A. C. 226 ; 11 W. R. 90.

Clause (c).—A memorandum of appeal from an order under s. 58 of Act VI. of 1882 presented to the High Court with a stamp of Rs. 2 is sufficiently stamped 1885 P. J. 214.

Clause (d).—Appeal to High Court under section 263 of the succession Act should be stamped under this section (A. W. N. 1889, 27.)

Memorandum or cross objection on question of costs is chargeable under this article 25 C. W. N. 934.

NUMBER.		PROPER FEE.
* 1A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b), clause (d), of article 1, of this schedule.
2 Application for leave to sue as a pauper ...	.. ..	Eight annas.
3. Application for leave to appeal as a pauper ...	(a.)—When presented to a District Court ...	One rupee.
	(b.)—When presented to a Commissioner or a High Court ...	Two rupees.

* Article 1 A. has been inserted by Act 14 of 1911.

SCHEDULE II—(Continued.)

Fixed Fees—(continued.)

NUMBER.		PROPER FEE.
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI. of 1838, or "the Mamlatdars' Courts Act, 1876."*	... ..	Eight annas.
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		

NOTE.

In a suit to establish or disprove a right of occupancy the plaint or memorandum of appeal should bear a court fee of eight annas as provided in Art 5—40A. 358. See also 11 C. L. R. 91 ; 16 M. 310.

6.† Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898‡ or the Code of Civil Procedure 1908 and not otherwise provided by this Act.

... ..

Eight annas.

NOTE.

When a bond is given under the order of a court as security by one party for the costs of another, it is subject to two duties, (a) one under the stamp act and (b) under this article. 11 A. 16. See also 21 C. W. N. 1150; But see 24 M. L. J. 637.

* The words quoted have been substituted, by the Repealing and Amending Act (XII. of 1891) for the words "Bombay Act No. V. of 1864 (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law)"

† Art. 6 have been substituted for the original by the Probate and Administration Act (VI. of 1889), s. 18 (2). The original article ran as follows: "Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority.

‡ See now the Code of Criminal Procedure (Act V. of 1898).

SCHEDULE II.—(continued.)

Fixed Fees—(continued.)

NUMBER.		PROPER FEE.
7. Undertaking under section 49 of the Indian Divorce Act.	... ..	Eight annas.
8 & 9. <i>Repealed by the Repealing and Amending Act (XII. of 1891)</i>		
10. Mukhtarnama or Vakalatnama ..	When presented for the conduct of any one case— (a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number ...	Eight annas [one rupee]*
10. Mukhtarnama or Vakalatnama—(contd.).	(b)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority.	One Rupee [one rupee eight annas]†
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.

NOTES.

A power to a vakil authorizing him to present an application for copies to the collector, falls under art 10, Sch II of the Court Fees Act. 9 M. 146 (F. B.)

See also 1 C. W. N. 11; 8 A. L. J. 378, (F. B.); 108 P. W. R. 1912; 6 Ind. cas. 617.

* The words one rupee have been substituted for the word eight annas in Bengal by Ben. Act IV. of 1922.

† The words "one rupee eight annas" have been substituted for the words "one rupee" in Bengal by Ben. Act IV of 1922.

SCHEDULE II.—(*continued*.)*Fixed Fees*—(*continued*.)

NUMBER.		PROPER FEE.
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint, or from a decree or an order having the force of a decree, and is presented—	(a) to any Civil Court other than a High Court, or to any Revenue Court, or executive officer other than the High Court, or Chief Controlling Revenue or Executive Authority	Eight annas.
	(b)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or or Revenue Authority	Two rupees.
* [11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—	(a) (i) to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas
	(ii) to any Civil Court other than a High Court	One rupee.
	(b) to a Chief Controlling Executive or Revenue Authority	Two rupees.
	(c) to a High Court.	Five rupees.]

An application to the High Court to set aside an order of a District Court, reversing an order of a court of first instance directing an award made without the intervention of a court to be filed, should be treated as an application for a miscellaneous special appeal—8 B. H. C. 17.

On the memorandum of a appeal made to the High Court from an order of the District Judge under s. 214 of the Indian Companies Act, a fixed Court-fee of Rs. 2 is payable with reference to art. 11 (b), Sch. II of the Court Fees Act (17A, 238).

An order refusing an application under ss. 253 and 336 of the Code of Civil Procedure for recovery of the amount decreed from a surety not being a decree nor an order having the force of a decree within the meaning of art. 11 of the second schedule to the Court Fees Act. 72 P. R. 1902.

* In Bengal the new article 11 has been substituted for the old one by Ben. Act IV of 1922.

An application for mesne profits by defendants against whom the suit had been dismissed is chargeable under this section. 11 C. L. J. 541.

Under s. 588, cl. (28) of the Civ. Pro. Code, the directing of Lower Court to re-admit a case under s. 562 of the Code is an order—it is not a decree under s. 2 of the Code, and according to this article, a memorandum of appeal should be charged. 21 A. 178.

Where a decree is obtained against a firm and execution is refused as against an alleged partner the Court fee payable on appeal from the order refusing execution is not regulated by this article. 35 Ind. Cas. 429.

A memorandum of appeal from an order dismissing an application for the ascertainment of mesne profits must be stamped with advalorem stamp on the amount claimed. 3 Pat. L. J. 101. See also 3 Pat. L. J. 99.

Appeal against the order of the Land Acquisition Judge rejecting an application claiming compensation is chargeable under this article. 8 C. W. N. 321.

Number.		Proper Fee,
12. Caveat.	... ..	Five rupees (ten rupees.)||
13. Application under Act No. X of 1859,* section 26, or Bengal Act No. VI of 1862,† section 9, or Bengal Act No. VIII of 1869,‡ section 37.	... ..	Five rupees.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866 § 15. [Repealed by Act V of 1908, Sch. V.]	... ..	Five rupees.

* Act X of 1859 has been repealed by the Bengal Tenancy Act (VIII of 1885) in those portions of the Lower Provinces to which that Act extends, and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879); in the N.-W. P. by Act (XVIII of 1873) [see now the North-Western Provinces Tenancy Act (II of 1901)]; and in the Central Provinces, by the Central Provinces Tenancy Act (XI of 1898).

† Ben. Act VI of 1862 has been repealed by the Bengal Tenancy Act (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends; and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879).

‡ Ben. Act VIII of 1869 has been repealed by the Bengal Tenancy Act (VIII of 1885).

§ Act XXI of 1866.

|| Above the words "five rupees" where they occur in the third column, opposite Article 12 and 13 in the same schedule to the same Act, the words "ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted so far as Bengal is concerned—Vide Ben. Act IV of 1922.

SCHEDULE II.—(continued.)

Fixed Fees.—(continued.)

NUMBER.		PROPER FEE.
16. [<i>Repealed by the Probate and Administration Act (VI of 1880), s. 18</i>]		
17. Complaint or memorandum of appeal in each of the following suits :— i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court :		
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates :		
iii. to obtain a declaratory decree where no consequential relief is prayed :	... ..	Ten rupees.
iv. to set aside an award		
v. to set aside an adoption :		
vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.		
[17* Plaintiff's memorandum of appeal in each of the following suits :		
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court :		Fifteen rupees.

* Article 17 has been amended by Ben. Act IV. of 1922 and is in force in Bengal.

SCHEDULE II.—(continued.)

Fixed Fees.—(continued.)

Number.		Proper Fee.
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates.		Fifteen rupees,
iii. to obtain a declaratory decree where consequential relief is prayed		Twenty rupees.
iv. to set aside an award		Fifteen rupees.
v. to set aside an adoption:		Twenty rupees.
vi. Every other suit where it is not possible to estimate at a money value the subject matter in dispute, and which is not otherwise provided for by this Act.		Fifteen rupees.

NOTES.

Clause (1).—A plaint to set aside summary order and to declare will genuine with consequential relief does not fall under this article. 16 W. R. 213.

A suit after rejection of claim to attached property is a suit in which consequential relief is charged for and does not fall under this clause. 13 C. 162.

A suit brought according to the provision of Act VIII. of 1859, s. 246, to establish the right of the person bringing it, must bear a stamp according to the value of the property. 22 W. R. 422.

A suit to have the order dismissing the claim set aside is to be stamped under this article. 26 C. W. N. 126.

Where the plaintiffs' property is attached at the instance of a creditor of its ostensible owner and plaintiff asks only for the release of his property from attachment, the Court fee payable would be Rs. 10 under this article. 43 Ind. Cas. 971.

The proper Court fee payable on the plaint in a suit brought under s. 283 C. P. Code is that prescribed by this article. 22 Ind. Cas. 676.

A suit for declaration made as regards the status of the plaintiff in a suit so framed should be made in the presence of the tenants settled by him. 16 C. L. J. 383.

Court fee for the plaint in a suit to contest an order passed under s. 282 of the Code of Civil Procedure is rupees ten. 12 P. L. R. 1902.

Clause (iii).—A plaint to have a summary order set aside, to have a will declared to be genuine, and to be retained in possession of the property of the deceased was held to be one for consequential relief, and one not coming under art 17, 5 ch II.—16 W. R. 213.

SCHEDULE II.—(continued.)

Fixed Fees.—(continued.)

NOTES.

See also, 5 Ind. Cas. 532; 1 O. C. 123; 70 P. R. 1877; 19 W. R. 17; 109 P. R. 1893; 21 P. R. 1895; 7 M. 134; 23 W. R. 453; 70 P. R. 1877; 16 W. R. 259; 1 B. 543; 6 A. 466; 51 P. R. 1897; 10 C. 599; 22 W. R. 438; 16 O. L. J. 194; 28 C. L. J. 301; 43 Ind. Cas. 64; 17 C. L. J. 416; 17 C. L. J. 426; 50 Ind. Cas. 298; 35 P. R. 1914.

Clause IV—Vide. 12 C. W. N. 169.

Clause V—Vide. 22 W. R. 338; 1 B. 248.

Clause VI—A suit under S. 14 of the Religious Endowment Act falls under this claim. 19 A. 104. A suit for the removal of Karnavan should be stamped under this section. 4 M. 146; 11 M. 206.

In a suit by two members of a joint family for money, so far as the question as to who are entitled to receive the money sued for is concerned, the memo of appeal was properly stamped with a court fee of Rs. 10 under this article. 71 P. R. 1911.

A plaint in which the plaintiff, being jointly in possession of certain property, prayed that the plaintiff's share might be partitioned, was sufficiently stamped with a court fee stamp of Rs. 10. 8 A. L. J. 1329 see also, 12 C. W. N. 37; 24 B. 128; 29 B. 79; 15 Ind. Cas. 57. but when he is not jointly in possession *ad valorem* court fee should be paid. 28 A. 348.

The court fee payable on appeals to the High Court in suits under s. 77 of the Registration Act, is ten rupees, irrespective of the value of the suit 8 C. 515; 31 M. 89 (F.B.).

In a suit for restitution of conjugal rights, the memorandum of appeal is not chargeable with *ad valorem* court fees, but a fee of Rs. 10 is payable there on under art. 17 (vi), court fees act. 8 A. L. J. 889. See also 18 C. 378; 8 C. W. N. 705; 28 A. 545.

Suit under S. 77 of the Registration Act, III of 1877 to enforce the registration of a will, should be stamped under this section. 12 M. L. J. 88.

To bring a case within the expression "Where it is not possible to estimate at a money value the subject matter in dispute," it must be established that it is not possible even to state approximately a money value for the subject matter in dispute. 13 C. W. N. 815. See also 37 C. 914.

A ten rupee stamp under this article is required in appeal against propriety of grant of extension of time. 7 N. L. R. 41.

A suit to establish a title prejudiced by an order in execution proceedings requires only a ten rupee stamp, although praying that the plaintiff might be put in possession. 1887 P. J. 36.

The proper Court fee in a case under section 92 is Rs. 10 as it falls under Art 17 cl. 6 of the Court fees Act and this is so even if there is a prayer for the appointment of the plaintiffs as trustees and also a prayer for accounts. 12 C. L. J. 211=14 C. W. N. 9 32=7 Ind. Cas. 92.

Section 11 of the Court fees Act does not apply to a claim for interest accrued due on a mortgage after decree. Art. 17 sub-sec. 6 applies to a claim. 27 A. 559.

Inter pleader suit is to be stamped under this article. 2 Pat. L. T. 280.

The decision of a District Judge granting or refusing probate on an application under s. 244, Succession Act, amounts to a decree within the meaning of s. 2 of C. P. Code. The appeal against such a decree should be stamped under this article. 35 A. 448; See also 22 Ind. Cas. 98.

Where in an appeal from a partition suit, there is no dispute as to the respective shares of the parties and the appellant seeks only to impeach the mode of partition, the case falls within this article, 62 Ind. Cas. 979; See also. 55 Ind. Cas. 236.

SCHEDULE II.—*concluded.**Fixed Fees—concluded.*

NUMBER.		PROPER FEE.
18. Application under section 523* of the Code of Civil Procedure.	.....	Ten rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.†	.....	Ten rupees.
20. Every petition under the Indian Divorce Act‡ except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	.....	Twenty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865§		

* The original reference to s. 326 of Act VIII of 1859, is altered to the above section of Act XIV of 1882. See now the second Schedule to Act V of 1908.

† This entry in the first column of art. 19 has been substituted for the original by Act V of 1908, Sch. IV.

‡ Act IV. of 1869.

§ Act XV. of 1865.

SCHEDULE III.*

(See section 19-I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY,
AS MAY BE NECESSARY).

IN THE COURT OF

Re Probate of the Will of

(or Administration of the Property and

of), deceased

I

{ solemnly affirm }
{ ————— }
{ make oath }

and say that I am the executor (or one of the executors, or one of the next-of-kin) of deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above-named deceased possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last mentioned items, but inclusive of all rents, interest, dividends, and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE

Rs. A. P.

(PROPERTY OF , DECEASED.

Cash in the house and at the banks, household goods,
wearing apparel, books, plate, jewels, &c.

(State estimated value according to best of Executor's or
Administrator's belief.)

Property in Government securities transferable at the
Public Debt Office

(State description and value at the price of the day ; also the
interest, separately calculating it to the time of making
the application.)

Immoveable property, consisting of

(State description, giving, in the case of houses, the assessed
value, if any, and the number of years, assessment the
market-value is estimated at, and, in the case of land,
the area, the market-value, and all rents that have
accrued.)

* Sch. III. has been inserted by the Court Fees Amendment Act (XI of 1890), s. 3, the original Sch. ("ENACTMENTS REPEALED") having since been repealed by Act XIV. of 1870.

SCHEDULE III—(continued.)

ANNEXURE A.—(continued.)

	Rs.	A.	P.
Leasehold property			
<i>(If the deceased held any leases for years determinable, state the number of year's purchase the profit rents are estimated to be worth, and the value of such, inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application.)</i>			
Property in public companies			
<i>(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)</i>			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money			
<i>(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)</i>			
Book debts			
<i>(Other than bad.)</i>			
Stock in trade			
<i>(State the estimated value, if any)</i>			
Other property not comprised under the foregoing heads ..			
<i>(State the estimated value, if any.)</i>			
Total			
Deduct amount shown in Annexure B not subject to duty ...			
NET TOTAL			
ANNEXURE B.			
SCHEDULE OF DEBTS, &c.			
Amount of debts due and owing from the deceased, payable by law out of the estate			
Amount of funeral expenses			
Amount of mortgage-incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest			
Other property not subject to duty			
TOTAL			

NOTES

The Court fee payable in respect of the estate left by the deceased is to be calculated upon the net value of the estate obtained by deduction of the amount of the debts from the gross value of the estate. 18 C. L. J. 30=18 C. W. N. 121.

The trusts referred to in Annexure B to Sch. III. of the Court Fees Act as exempt from duty are trusts not created by the testator's will to take effect after his decease, but trusts held not beneficially by the testator during his life time. 2 Pat. L. J. 611.

"Property held in trust" within the meaning of Annexure B in the form set out in Schedule III. of the Court Fees Act is property held in trust by the testator has created a trust. 6 Pat. L. J. 411; 2 Pat. L. T. 688.

ACT VIII. OF 1870.

The Female Infanticide Prevention Act, 1870.*

RECEIVED THE G.-G.'s ASSENT ON THE 18th- MARCH 1870.

An Act for the prevention of the murder of Female Infants.

Whereas the murder of female infants is believed to be commonly committed in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:—

1. If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may† declare, by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act in such district, or in respect of such class, or family, or persons.

Power to take measures under Act in particular districts.

The notification shall define the limits of such district, or shall specify the class, or family, or persons to whom such notification is to be deemed to apply.

2. When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section 3, from time to time to make rules,‡ consistent with this Act, for all or any of the following purposes:—

Power to make rules.

(1.)—For making and maintaining registers of births, marriages, and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons or of any other persons residing within such district:

* Act VIII. of 1870 has been declared under the Scheduled Districts Act (XIV. of 1874.) to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardanga, and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

The short title was given by the Indian Short Titles Act (XIV. of 1897.)

† Certain words after this have been omitted by Act 38 of 1920.

‡ See the N.-W. P. Rules, *Gazette of India*, Feb. 11, 1871, p. 76: Oudh Rules, *ibid.*, May 11, 1872, p. 523; Bombay Rules as to the Lewa and Karwa Kāmbi Castes in the Ahmadabad and Kaira Districts, *Bombay Government Gazette*, Extraordinary, April 15, 1871, p. 453; Sep. 25, 1878, p. 786.

- (2.)—For the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family, or persons, or for carrying out any of the provisions of this Act :
- (3.)—For prescribing how and by whom information shall be given to the proper officers of all births, marriages, and deaths occurring or about to occur in such district, or in or among such class, family, or persons :
- (4.)—For the regulation and limitation of expenses incurred by any person to whom such notification applies, on account of the celebration of marriage or of any ceremony or custom connected therewith :
- (5.)—For regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district or from the persons to whom such notification is applicable :
- (6.)—For defining the duties of any officer or servant appointed to carry out any rule made under this section.

3 No rule or alteration made under section 2 shall take effect until it shall have been* published in the local Gazette.

Confirmation and publication of rules.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Punishment for breach of rules.

5. Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act : Provided that no person shall be punished twice for the same offence.

Saving of prosecutions under other laws.

* Certain words after this have been omitted by Act 38 of 1920.

6. If it appears to the Magistrate of the district that any person, to whom the notification in section 1 applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

The Magistrate of the district may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable ; and, if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by sections 386 and 387* of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section 488* of the same Code.

7. This Act shall, in the first instance, extend only to the North-Western Provinces, to the Punjab, and to Oudh, but the Governor-General may by order, extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India ; "and the local Government of other part of British India may by notification published in the local official Gazette, extend it to any part of the territories under the administration of that, Local Government.†

Every order under this section made by the Governor-General of India Council shall be published in the *Gazette of India*. Every other order under this section shall be published in the local official Gazette.

* See Act V. of 1898, s. 3.

† The words within quotations have been substituted by 38 of 1920.

ACT XXI OF 1870.*

Hindu Wills Act.

RECEIVED THE G. G.'S ASSENT ON THE 19TH JULY 1870.

An Act to regulate the Wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

Whereas it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindus, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay ; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Hindu Wills Act, 1870."

Certain portions of Act X. of 1865 extended to wills of Hindus, Jainas, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely,—

sections 46, 48, 49, 50, 51, 55, and 57 to 77 (both inclusive),
sections 82, 83, 85, 88 to 103 (both inclusive),
sections 106 to 177 (both inclusive), † and
section 187. ‡

shall, notwithstanding anything contained in section 331 of the said Act, apply—

(a) to all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay ; and

Extent of Act.

*Act XXI. of 1870 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The District of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I., p. 504.

It has been declared in force in the Santhal Parganas by Reg. (III. of 1872) s. 3. as amended by Reg. (III. of 1809), s. 3.

† See Act V. of 1881, s. 154.

‡ This clause has been inserted by the Probate and Administration Act (V. of 1881), s. 154, in lieu of the following clauses :—

"sections 179 to 189 (both inclusive),

"sections 191 to 199 (both inclusive),

"so much of Parts XXX. and XXXI. as relates to grants of probate and letters of administration with the will annexed, and

"Parts XXXIII. to XL, (both inclusive), so far as they relate to an executor and an administrator with the will annexed."

(d) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits :

3. Provided that marriage shall not revoke any such will or codicil :

Provisos.

And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section 2 of this Act, he could not deprive them by will.*

And that nothing herein contained shall affect any law of adoption or intestate succession :

And that nothing herein contained shall authorize any Hindu, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

4. On and from that day, section 2 of Bengal Regulation V. of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Partial repeal of Bengal Regulation V. of 1799, section 2.

5. Nothing contained in this Act shall affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively.†

Saving of rights of Administrator-General.

6. In this Act and in the said sections‡ of the Indian Succession Act, all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively :

Interpretation clause.

And in applying sections 62, 63, 92, 96, 98, 99, 100, 101, 102, § and 103 of the said Succession Act to wills and codicils made under this Act, the words "sons," "child," and "children" shall be deemed to include an adopted child ; and the word "grand children" shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born ; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.

* A clause following this, which was repealed by Act V. of 1881, s. 154, has been omitted.

† See Act II. of 1874.

‡ In s. 6, the words "and Parts" have here been omitted, having been repealed by Act XII. of 1891.

§ See Act V. 1881 s. 154.

ACT XXIV OF 1870.

The Oudh Taluqdars' Relief Act.'

RECEIVED THE G.-G.'S ASSENT ON THE 7TH SEPTEMBER 1870.

An Act to relieve from incumbrances the estate of Taluqdars in Oudh.

WHEREAS many of the taluqdars of Oudh are in debt, and their immoveable property is subject to mortgages, charges, and liens; and whereas it is expedient to provide for their relief in manner hereinafter appearing; It is hereby enacted as follows :—

Preamble.

1.—PRELIMINARY.

Short Title.

1. This Act may be called "The Oudh Taluqdars' Relief Act."

Interpretation-clause.

2. In this Act—

'Chief Commissioner' means the Chief Commissioner of Oudh ;

'taluqdar' means a person whose name is entered in the first of the lists mentioned in the Oudh Estates' Act, 1869, section eight :

'heir, means the person for the time being entitled under the same Act as heir to a taluqdar.

II.—VESTING ORDER

Power to vest management of taluqdar's property in officer appointed by Chief Commissioner.

3. Whenever, within twelve months after the passing of this Act, any taluqdar,

or (when such taluqdar is an infant, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

or the person who would be heir to such taluqdar if he died intestate.

or (when such person is an infant, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

applies in writing to the Chief Commissioner, stating that the taluqdar is subject to, or that his immoveable property is charged with, debts or liabilities other than debts due, or liabilities incurred, to Government, and requesting that the provisions of this Act be applied to his case.

the Chief Commissioner may, with the previous consent of the Governor-General of India in Council, by order published in the local official Gazette, appoint an officer (hereinafter called the manager), and vest in him the management of the immoveable property of or to which the taluqdar is then possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on the taluqdar or his heir during the continuance of such management.

Effect of order.

4. On such publication, the following consequences shall ensue.

first, all proceedings in respect to such debts or liabilities which may then be pending in any Civil Court in British India, shall be barred ; and all processes, executions, and attachments for or in respect of such debts and liabilities, shall become null and void ;

Taluqdar freed from arrest. *secondly*, so long as such management continues,

the taluqdar and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the taluqdar was immediately before the said publication subject, or with which his immoveable property or any part thereof was then charged, other than debts due, or liabilities incurred, to Government ;

nor shall their moveable property be liable to attachment or sale, under process of any Civil Court in British India, for or in respect of such debts and liabilities other than as aforesaid ; and

Cessation of his power to alienate. *thirdly*, so long as such management continues,

(a) the taluqdar and his heir shall be incompetent to mortgage, charge, lease, or alienate their immoveable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom,

and (b) such property shall be exempt from attachment or sale under such process as aforesaid, except for or in respect of debts due, or liabilities incurred, to Government.

Immoveable property freed from attachment.

III.—DUTIES OF MANAGER.

5. The manager shall, during his management of the said property, receive and recover all rents and profits due in respect thereof ; and shall, upon receiving such rents and profits, give receipts for the same.

Manager to receive rents and profits.

From the sums so received, he shall pay—

first, the Government revenue, and all debts or liabilities for the time being due or incurred to Government in respect of the said property.
any pay therefrom Government demand.

secondly, such annual sum as appears to the Chief Commissioner requisite for the maintenance of the taluqdar, his heir, and their families :
annual sum for maintenance of taluqdar and his heir,

thirdly, the costs of such repairs and improvements of the property as appear necessary to the manager, and are approved by the Chief Commissioner ;
costs of repairs and improvements.

and the residue shall be applied in discharge of the costs of the management, and debts and liabilities of the taluqdar and his heir and their immoveable property, as may be established under the provisions hereinafter contained.
Costs of managements,
in settlement of such
and debts and liabilities.

IV.—SETTLEMENT OF DEBTS.

6. On the publication of the order vesting in him the management of the said property, the manager shall publish in the local official Gazette a notice in English and Urdu, calling upon all persons having claims against the taluqdar or his immoveable property to notify the same in writing to such manager within three months from the date of the publication.
Notice to claimants against taluqdar.

He shall also cause copies of such notice to be exhibited at the tasildar's kacharis in the district or districts in which the said property lies, and at such other places as the manager thinks fit.
Copies of notice to be exhibited.

7. Every such claimant shall, along with his claim, present full particulars thereof.
Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.
Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies.
Entries in books.

The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

8. Every debt or liability (other than debts due, or liabilities incurred, to Government) to which the taluqdar is subject, or with which his immovable property or any part thereof is charged, and which is not duly notified to the manager within the time and in manner herein before mentioned, shall be barred ;

Debt or liability, not duly notified, to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of sections 6 and 7, the manager may admit such claim within the further period of nine months from the expiration of the said period of three months,

Provision for admission of claim within further period of nine months.

9. The manager shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities due to the several creditors of the talukdar and persons holding mortgages, charges or liens on the said property or any part thereof.

Determination of debts and liabilities.

10. An appeal against any refusal, admission, or determination under sections 7, 8, or 9, shall lie if preferred within six weeks from the date of such determination, to the Commissioner of Division to whom the manager is subordinate, and the decision of such Commissioner, or of the manager, if no such appeal has been so preferred, shall be final.

Appeal.

11. When the total amount of such debts and liabilities has been finally determined, the manager shall prepare and submit to the Chief Commissioner a schedule of such debts and liabilities, and a scheme for the settlement thereof ; and such scheme, when approved by the Chief Commissioner, shall be carried into effect.

Scheme for settlement of debts and liabilities.

Until such approval is given, the Chief Commissioner may, as often as he thinks fit, send back such scheme to the manager for revision, and direct him to make such further enquiry as may be requisite for the proper preparation of the scheme.

12. When all such debts and liabilities have been discharged, or if, within six months after the publication of the order mentioned in section 3, the Chief Commissioner thinks that the provisions of this Act should not continue to apply to the case of the taluqdar or his heir,

the taluqdar or his heir shall be restored to the possession and enjoyment of his immoveable property, or of such part thereof as has not been sold by the manager under the power contained in section 19, but subject to the leases and mortgages (if any) granted and made by the manager under the powers hereinafter contained.

Where the taluqdar or his heir is so restored under the circumstances mentioned in the second clause of this section, the proceedings, processes, executions, and attachments mentioned in section 4* (so far as they relate to debts and liabilities not settled by the manager,) and the debts and liabilities barred by section 8, shall be revived, and any mortgagee dispossessed under section 17 shall be reinstated, unless his claim under the mortgage has been satisfied ;

and in calculating the periods of limitation applicable to such revived proceedings, and to suits to recover and enforce such revived debts and liabilities, the time intervening between such restoration and the publication of the order mentioned in section 3 shall be excluded.

V.—POWERS OF MANAGER.

13. The manager may, from time to time, call for further and more detailed particulars of any claim preferred before him under this Act, and may, at his discretion, refuse to proceed with the investigation of the claim until such particulars are supplied.

* The figure "4" has been substituted for the figure "3" by Act XII. of 1891, Sch. II.

14. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses, and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.*

15. The manager may administer an oath in such form as he thinks fit to any person examined before him touching the matters to be enquired into under this Act.

16. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

And every statement made by any person examined by or before the manager with reference to such investigation, whether upon oath or otherwise, shall be taken to be evidence within the meaning of the same Code.

17. The manager shall have, for the purpose of realizing and recovering the rents and profits of the said immoveable property, the same powers as the taluqdar would have had for such purpose if this Act had not been passed.

And if such property, or any part thereof, be in the possession of any mortgagee, the manager may apply to the Court of the Deputy Commissioner within whose jurisdiction the property is situate, and such court shall cause the same to be delivered to the manager as if a decree therefor had been made in his favour ; but without prejudice to the mortgagee preferring his claim under the provisions hereinbefore contained.

18. Subject to the rules made under section 20, the manager have power to demise all or any part of the said property for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of any fine or fines, or without fine and reserving such rents and under such conditions as may be agreed upon,

* This reference should now be read as applying to Act V. of 1908. See s. 158 of that Act.

19. The manager, with the previous assent of the Chief Commissioner, shall have power to raise any money which may be required for the settlement of the debts and liabilities (other than as aforesaid) to which the taluqdar is subject, or with which his immoveable property or any part thereof is charged.

by demising by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the said publication,

or by selling, with the previous consent of the taluqdar and of the person (being of full age) who would be his heir if he died intestate, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the same property as may appear expedient.

And no mortgagee advancing money upon any mortgage made under this section shall be bound to see that such money is wanted, or that no more than is wanted is raised.

And the receipt of the manager for any moneys paid to him upon any mortgage or sale made under this section, or for any rents or profits received by him under section 5, shall discharge the person paying the same therefrom, and from being concerned to see to the application thereof.

The power to mortgage conferred by this section shall not be exercisable until six months have elapsed from the publication of the order mentioned in section 3.

VI.—MISCELLANEOUS.

20. The Chief Commissioner may, from time to time, make rules consistent with this Act in all matters connected with its enforcement.

Such rules, when approved by the Governor-General of India in Council, and published in the local official Gazette,* shall have the force of law.

21. Whenever the Chief Commissioner thinks fit, he may appoint any officer to be a manager in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

* See *Oudh Gazette*, 1st April, 1871, p. 198.

Every such new manager shall have the same powers as if he had been originally appointed.

22. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Managers to be public servants.

23. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Bar of suits.

24. No petition, application, memorandum of appeal, or other proceedings under this Act, shall be chargeable under the Court Fees Act, 1870.

Petitions, &c., under Act exempt from Court fees.

25. Nothing in this Act precludes the Courts of the Province of Oudh, having jurisdiction in suits relating to the succession to, or rights of person claiming maintenance from, any immoveable property brought under the operation of this Act, from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Saving of jurisdiction of Courts in Oudh in respect of certain suits.

ACT XXVII. OF 1870.*

The Indian Penal Code Amendment Act, 1870 †

RECEIVED THE G. G.'S ASSENT ON THE 25TH NOVEMBER 1870.

An Act to amend the Indian Penal Code.

Preamble

For the purpose of amending the Indian Penal Code, It is hereby enacted as follows :—

Liability for act done by several persons in furtherance of common intention.

1. For section 34 of the said Code, the following section shall be substituted :—

“ 34.” [*See above, p. 340.*]

“ Offence.”

2. For section 40 of the said Code, the following section shall be substituted :—

“ 40.” [*See above, p. 376.*]

Proviso as to sentence for term exceeding ten years, but not for life.

3. Section 56 of the said Code shall be read as if the following proviso were added thereto :

“Provided that” [*See above, p. 380*]

Conspiracy to commit offences punishable by section 121.

4. After section 121 of the said Code, the following section shall be inserted :—

“121A.” [*See above, p. 405.*]

5. (Repealed by Act I of 1903)

Addition to section 131.

6. Section 131 of the said Code shall be read as if, the following Explanation were added thereto :—

[*See above page 409.*]

7. [*Repealed by Act XXI. of 1891, Sch. I.*]

* Act XXVII of 1870 has been declared in force in the Santhal Parganas by the Reg. (III of 1872) s. 3 as amended by Reg. (III of 1899) s. 3; and in the Arakan Hill district by Reg. (IX. of 1874) s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the district of Singbhum

... See *Gazette of India* ...
1881, Pt. I, p. 504.

The North-western Provinces Tarai ... Ditto .. 1876, Pt. 1, p. 505

† This Short title has been given by Act—14 of 1877.

8. Sections 222 and 223 of the said code, shall be construed as if, after the word 'offence,' the following words were inserted (that is to say), 'or lawfully committed to custody ;' "
 Amendment of sections 222 and 223.

and section 221 of the said Code shall be construed as if the following words were added thereto (that is to say), "or if the person was lawfully committed to custody."

9 [*Repealed by Act XII. of 1891, Sch. I.*]

10. After section 294, and before Chapter XV. of the Indian Penal Code, the following section shall be inserted:—
 Keeping lottery-office.

"294A." [*See above, p. 464.*]

11. Section 307 of the said Code shall be read as if the following clause were added thereto:—
 Attempts by life-con-
 victs.

"When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death."

12. After section 304 of the same Code, the following section shall be inserted:—
 Causing death by negli-
 gence.

"304A." [*See above, p. 464.*]

ACT I. OF 1871.*

The-Cattle-Trespass Act.

RECEIVED THE G. G.'S ASSENT ON THE 13TH JANUARY 1871.

An Act to consolidate and amend the law relating to Trespasses by Cattle.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle ; it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title and extent. 1. † (1) This Act may be called the Cattle-trespass Act, 1871 ; and

(2) It Extends to the whole of British India except the Presidency-towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time exclude from its operation.

* Act 1. of 1871 has been declared in force in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3 ; in Angul and Khondmals by Reg. (1. of 1894), s. 2 ; and Reg. (3 of 1913) s. 3 in the Arakan Hill District by Reg. (1 of 1916 s. 2 ; in Upper Burmah (except the Shan States) by Act (XIII. of 1898), s. 4 ; and in British Baluchistan by Reg. (II. of 1913) s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kholan in the

District of Singbhum ... See *Gazette of India*...1881, Pt. I., p. 504.
The north-Western Provinces Tarai ... Ditto ...1876, Pt. 1., p. 505.

As to transfer of functions of Local Government and District Magistrate to local authorities, see the Central Provinces Local Self-government Act I. of 1883, s. 9 cl. (f) ; the North-Western Provinces and Oudh Local Boards Act XIV. of 1883, s. 24, cl. (f) ; and the Panjab District Boards Act XX. of 1883, s. 20 (2), cl. (n).

Act XVIII. of 1883 (*to amend the Cattle-trespass Act, 1871*), is repealed by Act I of 1891 (*an act to amend the Cattle-trespass Act, 1871, and to incorporate therein Act XVIII of 1883*), provided that orders which have been made and notified under that Act (XVIII. of 1883) by the Local Government, and are in force immediately before the commencement of this Act (1. of 1891), shall be deemed to have been made under the Cattle-trespass Act, 1871, as amended by Act 1 of 1891—See Act I. of 1891, s. 10.

Any enactment or documents referring to the Cattle-trespass Act, 1871, or to Act XVIII. of 1883 (*to amend the Cattle-trespass Act, 1871*), shall be construed to refer to the Cattle-trespass Act, 1871, as amended by Act 1. of 1891—See Act 1. of 1891, s. 12.

† S. 1 has been substituted by Act 1. of 1891.

(3) The Local Government may at any time by notification in the official Gazette, cancel or vary a notification under sub-section (2)

Repeal of Acts

2 The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III. of 1857 * (*relating to Trespasses by Cattle*), shall be deemed to be, respectively, established, appointed and determined under this Act.

3. In this Act—

Interpretation clause.

'Officer of police' includes also village-watchman, and

'Cattle' includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids, and,

'Local authority' means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

'Local fund' means any fund under the control or management of a local authority.†

CHAPTER II.

POUNDS AND POUND-KEEPERS.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

5. The pounds shall be under the control of the Magistrate of the District ; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers

6. The Magistrate of the District shall also appoint for each pound a pound-keeper :

* Repealed by this Act, s. 2.

† The last two paras of s. 3 have been added by Act I, 1891.

Provided that, in the Presidency of Fort st. George, the heads of village and in the Presidency of Bombay, the police-patils, or (where there are no police-patils) the heads of villages, shall be *ex-officio* the keepers of village-pounds.

Suspension or removal of pound-keepers,

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be public servants.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

Duties of Pound-keepers.

To keep registers and furnish returns,

directs.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time

To register seizures,

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

- (a) the number and description of the animals,
- (b) the day and hour on and at which they were so brought,
- (c) the name and residence of the seizer, and
- (d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle,

9. The pound-keeper shall take charge of, feed, and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III.

IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize, or cause to be seized, any cattle trespassing on such land, and doing damage thereto, or to any crop or produce thereon, and "send them, or cause them to be sent, within twenty-four hours,"* to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing
 Police to aid seizure. (a) resistance to such seizures, and (b) rescues from persons making such seizures.

NOTES.

Occupier.—A person in exclusive possession of a piece of land is the occupier of the land. The question of title does not affect the right of the occupier, to seize the cattle trespassing on the land in his possession. 32 Ind. Cas. 655. The lessee of a grazing land is clearly entitled to impound cattle. 18 Cr. L. J. 849. A servant of an indigo factory, cannot seize cattle doing damage to the indigo in raiyat's own land, even when the factory pays for the labour of sowing etc. 9 C. W. N. 624. Persons who let out the land on lease are not occupier. 23 C. W. N. 387.

Trespassing.—Seizure of cattle actually trespassing is legal. 1 Weir 709.

11.† Persons in charge of public roads, pleasure grounds, Cattle damaging public roads, canals, and embankments. plantations, canals drainage-works, embankments, and the like and officers of police, may seize, or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works, or embankments, or found straying thereon, and shall "send them, or cause them to be sent, within twenty-four hours,"‡ to the nearest pound.

12§ For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine in accordance with the scale for the time being prescribed by the Local Government in this behalf by notification in the official Gazette. Different scales may be presented for different Local areas.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government may direct.

A list of the fines and of the rates of charges for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound.

* In s. 10 the words quoted have been substituted by Act I of 1891.

† As to the application of this section to reserved and protected forests, see VII. of 1878, s. 69 ; to railways, see Act IX of 1890, s. 125.

‡ In s. 11, the words quoted have been submitted for the words, "take them without unnecessary delay," by Act I. of 1891

§ Section 12 has been substituted by Act 17 of 1921.

CHAPTER VI.

DELIVERY OR SALE OF CATTLE.

13 If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

Procedure when owner claims the cattle, and pays fines and charges.

The owner or his agent on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police station, or to such other officer as the Magistrate of the District appoints in this behalf.

Procedure if cattle be not claimed within a week.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure,

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions, as the Magistrate of the District, by general or special order, from time to time directs :

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges in-curred in respect of the cattle, the cattle shall be delivered to him,

Delivery to owner disputing legality of seizure, but making deposit.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time and subject to such conditions, as are referred to in section 14.

Procedure when owner refuses or omits to pay the fines and expenses. The fines leviable, and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Deduction of fines and expenses. The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

Receipt. The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses and surplus proceeds of sale. **17.** The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering, deducted under section 16, shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sales. **18.** Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

- (a) the salaries allowed to pound-keepers under the orders of the Local Government ;

- (b) the expenses incurred for the construction and maintenance of pounds or for any other purpose connected with the execution of this Act ;

and the surplus (if any) shall be applied, under order of the Local Government to the construction and repair of roads and bridges and to other purposes of public utility.

19. No officer of police, or other officer, or pound keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Officers and pound-keepers not to purchase cattle at sales under Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

Pound-keepers when not to lease impounded cattle.

CHAPTER V.*

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the district.

Power to make complaints.

NOTES.

Jurisdiction—conferred by ss. 20 to 33 is a special jurisdiction and is unaffected by S. 192 of the Criminal Procedure Code. There is no provision of appeal. 23 C. 300 ; But see 34 C. 926.

Illegal seizure is not a criminal offence. L. B. R. (1872-1892), 515 ; 23 C. 248 ; but see s. 4 of Criminal Procedure Code and 34 C. 926. An order for compensation to the accused cannot be made, 9 M. 374 ; 4 L. B. R. 11.

Charges—mean complaint. 11 C. P. L. R 10, Cr.

Authorized—Vide 44 Bom. 42-21 Bom. L. R. 1084,

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

* This Chapter has been substituted by Act I of 1891,

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case,

NOTES.

Scope—The person entitled to complain, under this section is either the complainant in person or an agent personally acquainted with the circumstances 5 Bom. L. R. 205.

Illegal seizure, compensation Vide 2 C. L. R. 507 ; L. B. R. (1872—1892), 515 ;

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle ;

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

NOTES.

Illegal seizure of cattle is not an ordinary criminal offence. Jurisdiction is given to certain Magistrates to adjudicate compensation to any person complaining of, and proving such seizure for the loss caused by the seizure and detention, as well as any fines and expenses incurred by the complainant in procuring the release of the cattle. 2 C. L. R. 507. This section does not provide a punishment for an offence. L. B. R. (1872-1892) 429. Proceeding under this section is a quasi civil proceeding 14 C. 175. An award of imprisonment in default of fine is illegal. 37 C. 992, 19 M. 233 ; 1 Weir 711. Compensation should be reasonable 25 P. R. 1873 Cr ; 37 P. R. 1873 Cr ; 36 P. R. 1878 Cr ; 5 P. R. 1880 Cr. This section does not provide for a fine in addition to compensation. 1 Weir 710 ; 7 M. H. C. A. pp. 24 ; 1 Weir 712 ;

Illegal seizure of cattle is an offence. 1 Weir 712 ; It follows therefore that a person against whom an order under this section is made is a person convicted on a trial. An appeal against the conviction is therefore under S. 407 Cr. Procedure Code. 2 Weir 320.

Appeal—lies against an order under this section. 4 L. B. R. 10 ; 2 Weir 320 ; 29 M 517 ; 34 C. 926.

As regards amount of compensations—Vide 1 Weir 715 ; 5 P. R. 1880 Cr ; (1872-1862) 515,

Onus—In a suit for damages for illegal seizure of cattle the onus lies on the deft. to prove that the seizure was justifiable in law 14 Ind. Op. 237.

23. The compensation, fines, and expenses mentioned in section 22, may be recovered as if they were fines imposed by the Magistrate.

Recovery of compensation.

NOTES

Appeal—against order of compensation and repayment of fine is maintainable. 23 Bom. L. R. 886.

CHAPTER VI.

PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same,

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, such person being near at hand, and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

NOTES

Scope—There cannot be any conviction under this section unless it is proved and found that the cattle was liable to be seized within the meaning of S. 10 and that damage was caused. 1 P. L. T. 176 ; 24 M. 318 ; 23 C. W. N. 387 ; 43 Ind. Cas. 445 ; 4 Pat. L. W. 40.

An offence under this section is not compoundable. 42 A. 202.

25. Any fine imposed "under the next following section, or" for the offence of mischief by causing cattle to trespass on any land, may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Recovery of penalty for mischief committed by causing cattle to trespass.

26. Any owner or keeper of pigs, who, through neglect or otherwise damages, or causes or permits to be damaged, any land, or any crop or produce of land, or any public road,† by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

Penalty for damage caused to land or crops or public roads by pigs.

* In s. 25 the words quoted have been inserted by Act I. of 1891.

† "Public road" here includes a railway.—See Act IX. of 1890. s. 125.

The Local Government, by notification in the official Gazette, may, from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words 'fifty rupees' were substituted for the words 'ten rupees, or as if there were both such reference and such substitution.*

The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Penalty on pound-keeper failing to perform duties.

Such fines may be recovered by deductions from the pound-keeper's salary.

Note—Vide Rat. Un. Cr. C. 632 ; 9 B. H. C. A. C. 164 ; 1 P. R. 1872. Cr.

28. All fines recovered under section 25, section 26, or section 27, may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate

Application of fines recovered under section 25, 26 or 27.

CHAPTER VII.

SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespasser cattle from suing for compensation in any competent Court.

Saving of right to sue for compensation.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by, or awarded to him as compensation in such suit.

Set off.

* In s. 26, the last two paragraphs have been added by Act I of 1891.

CHAPTER VIII.*

SUPPLEMENTAL.

Power for Local Government to transfer certain functions to local authority and direct credit of surpluses receipts to local fund.

31. The Local Government may, from time to time, by notification in the official Gazette—

- (a) transfer to any local authority, within any part of the territories under its administration in which this Act is in operation all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or
- (b) direct that the whole or any part of the surpluses accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district,

and may, from time to time by notification in the official Gazette, cancel or vary any notification under this section.

SCHEDULE.

(See section 2.)

Number and year.	Title of Act.
III. of 1857	An Act relating to trespasses by cattle.
V. of 1860	An Act to amend Act III. of 1857 (relating to trespasses by cattle).
XXII. of 1861... ..	An Act to amend Act III of 1857 (relating to trespasses by cattle.).

* Ch VIII has been added by Act I of 1891

ACT IV OF 1871.

The Coroners Act.

RECEIVED THE G.-G'S ASSENT ON THE 27TH JANUARY 1871.

An Act to consolidate and amend the laws relating to Coroners.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

- | | |
|-----------------------|---|
| Short title. | 1. This act may be called "The Coroners Act, 1871." |
| Local extent. | [<i>Repealed by Act X. of 1881.</i>] |
| Commencement. | [<i>Repealed by Act XVI. of 1874.</i>] |
| Repeal of enactments. | 2. [<i>Repealed by Act XII. of 1873.</i>] |

CHAPTER II.

APPOINTMENT OF CORONERS.

- | | |
|---|---|
| Coroners of Calcutta and Bombay. | 3. Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay there shall be a Coroner. Such Coroners shall be called respectively the Coroner of Calcutta and the Coroner of Bombay.* |
| Their appointment, suspension, and removal. | 4. Every such officer shall be appointed and may be suspended or removed by the Local Government.† |
| Coroners to be public servants. | 5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code. |
| Power to hold other offices | 6. Any Coroner may hold simultaneously any other office under Government. |
| Oath to be taken by Coroner. | 7. [<i>Repealed by Act X. of 1873.</i>] |

* S. 3 has been substituted by Act V. of 1889.

† The second paragraph of s. 4 has been omitted, having been repealed by Act XII. of 1891.

CHAPTER III.

DUTIES AND POWERS OF CORONERS.

8. When a Coroner "has reason to believe"* that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person, being a prisoner, has died in prison,

and that the body is lying within the place for which the Coroner is so appointed.

the Coroner shall enquire into the cause of death.

Every such enquiry shall be deemed a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is appointed, the Superintendent of the prison shall send for the Coroner before the body is "disposed of".† Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

11† A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where the Coroner considered it necessary or desirable in the interests of justice to take a further inquisition"†.

* The words quoted have been substituted for the words "is informed" by Act X, of 1881, s. 5.

† The words within quotations have been substituted by ss. 9 and 11 and added in s. 15 by Act 4 of 1908.

‡ Compre Act V. of 1898, s. 176, para. to.

12. On receiving notice of any death mentioned in section 8,
 the Coroner shall summon five, seven, nine,
 Summning jury. eleve, thirteen, or fifteen respectable persons
 to appear before him at a time and place to be specified in the
 summons, for the purpose of enquiring when how, and by what
 means the deceased came by his death.

Any inquest under this Act may be held
 Inquest may be on sunday on a sunday.

13. When the time arrives, the Coroner shall proceed to the
 place so specified, open the Court by
 Opening Court. proclamation, and call over the names of
 the jurrors.

14. When a sufficient jury is in attendance, he shall administer
 an oath to each juror to give a true verdict
 Jurors to be sworm. according to the evidence, and shall then
 proceed with the jury to view the body.

15. The Coroner and the jury shall view and examine the body
 at the first sitting of the inquest, and the
 View of body. Coroner shall make such observations to the
 jury as the appearance of the body requires.

"Provided that the Coroner may, with the concurrence of a
 majority of the jury, dispense with a view of the body, if he is
 satisfied, from medical evidence or medical certificates, that no
 advantage would result from such viewing."*

16. The Coroner shall then make proclamation for the
 attendance of witnesses, or, where the
 Proclamation for witness- enquiry is conducted in secret, shall call in
 ess. seprately such as known anything concerning
 the death.

17. "It shall be the duty of all persons acquainted with the
 circumstances attending the death to appear
 Summoning witnesses. before the inquest as witnesses ; the Cor-
 oner shall enquire of such circumstances
 and the cause of death ; and if, before or during the enquiry, he
 is informed that any person, whether within or without the local
 limits of his jurisdiction, can give evidence or produce any docu-
 ment material thereto, may issue a summons requiring him to
 attend and give evidence or produce such document on the in-
 quest.†

* The words within quotations have been added by Act IV of 1908.

† The first two clauses of s. 17 have been substituted by Act X of 1881, s. 6
 for the two clauses originally enacted.

"Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175, or section 176 of the Indian Penal Code, as the case may be,"*

For the purpose of causing prisoners to be brought up to give evidence, the coroner shall be deemed a Criminal Court within the meaning of "Part IX of the Prisoners Act 1900"†

18. The Coroner may direct the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest ; and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

Post-mortem examinations,
Fees to medical witnesses

18A. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.†

Report of Chemical Examiner.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Evidence to be on oath.
Evidence on behalf of accused.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

Interpreter.

After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness ; and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Questions suggested by jury.

* This clause has been added by Act X of 1881.

† The words within quotations have been substituted by Act IV of 1908, § 18 A has also been added by Act IV of 1908.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness, and then procure his signature thereto.

Coroner to take down evidence in writing.

Witnesses to sign depositions.

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code.

Coroner to subscribe deposition.

Every such deposition shall be subscribed by the Coroner.

For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate *

Adjournment of inquest.

21. The Coroner may adjourn the inquest from time to time, and from place to place.

Whenever the inquest is adjourned, the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

The amount of such recognizances shall in each case be fixed by the Coroner "and the whole, or such part thereof as to the Coroner seem fit, shall, in default of attendance by the jurors, be recoverable, in the same manner as a fine imposed under section 31" †

22. When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

Coroner to sum up to jury.

23. When the verdict is delivered, the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Coroner to draw up inquisition.

24. Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

Contents of inquisition.

- (1) where, when, and before whom, the inquisition is holden,
- (2) who the deceased is,
- (3) where his body lies,
- (4) the names of the jurors, and that they present the inquisition upon oath,

* This clause has been added by Act X of 1881, s. 7.

† The words within quotations have been added by Act IV of 1908.

(5) where, when, and by what means, the deceased came by his death, and

(6) if his death was occasioned by the criminal act of another who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

"25. * When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of police.

NOTES.

In conformity to the ruling laid down in 16 B. 159 and 31 C. I this new section has been substituted for the old one by Act 10 of 1908.

26.† The coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.

27. [*Power to accept bail—Repealed by Act IV of 1908*]

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest the Coroner shall give his warrant for the disposal‡ of the body on which the inquest has been taken.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

*Section 25 has been substituted by Act IV of 1908.

† This section 26 has been substituted by Act IV of 1908.

‡ The words within quotations have been substituted by Act IV of 1908.

30. It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure-trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

Cessation of jurisdiction as to treasure-trove, wrecks &c.

Felo de se.

A *felo de se* shall not forfeit his goods.

Deodands.

Deodands are hereby abolished.

CHAPTER IV.

CORONERS' JURIES.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person and proof that such summons has been served upon him or left at his usual place of abode may impose such fine upon the defaulter not exceeding fifty rupees, as to the Coroner seems fit.

Fine on juror neglecting to attend.

32. The Coroner shall make out and sign a certificate containing the name and surname, the residence and trade or calling, of every person so making default, together with the amount of the fine as imposed, and the cause of such fine.

Certificate as to defaulting juror.

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

and shall cause a copy of such certificate to be served upon the person so fined by having it left at his usual place of residence, or by sending the same through the post-office, addressed as aforesaid and registered.

Service of copy of certificate.

33. Thereupon such magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

Levy of fine.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year, after such appearance or summons, be summoned to appear as a juror under this Act.

Jurors not to be twice summoned within the year.

35. When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison, and no prisoner confined therein, shall be a juror on such inquest.

Jurors on inquest on prisoner.

CHAPTER V.

RIGHTS AND LIABILITIES OF CORONERS.

36. Every coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the "Local Government."*

Coroner's salary.

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury, and the like, shall be repaid to him by the Local Government,

Disbursement to be repaid.

38. Every Coroner may, from time to time, with the previous sanction of the local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests.†

Power to appoint deputy.

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him:

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Revocation of appointment.

39. No Coroner or Deputy Coroner shall be liable to serve as a juror.

Exemption from serving on juries.

40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

Privilege from arrest.

* The words within quotations have been substituted by Act 38 of 1920.

† Certain words referring to the limitation of suits, which were repealed by Act IX. of 1871. have been omitted.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

Penalty for failure to comply with Act.

42. No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted* after tender of sufficient amends.

Proceedings barred by tender.

FIRST SCHEDULE.—[*Repealed by Act XII of 1873.*]

SECOND SCHEDULE

Form of Inquisition.

An Inquisition taking at on the day of 18 , before E. F., Coroner of , “in the case of A. B. deceased,”† upon the oath of G. H., I. J., K. L., and M. N., then and there duly sworn and charged to enquire when, how, and by what means, the said A. B. came to his death.

We, the said jurors, find unanimously [or by a majority] that the death of the said A. B. was caused on or about the day of 18 , by [*here state cause of death as in the following examples* :—

1. *Cases of homicide*—a blow on the head with a stick inflicted on him by C. D., under such circumstances that the act of C. D. was justifiable [or accidental homicide].

—a stab on the heart with a knife inflicted on him by C. D., under such circumstances that the act of C. D. was culpable homicide not amounting to murder [or culpable homicide amounting to murder, or a rash or negligent act not amounting to culpable homicide].

2. *Cases of accident*—falling out of a boat into the river Hugli whereby he was drowned.

—a kick from a horse which fractured his skull, and ruptured blood-vessels in his head.

3. *Cases of suicide*—shooting himself through the head with a pistol.

—arsenic, which he voluntarily administered to himself.

1. *Cases of sudden death by means unknown*—disease of the heart.

—apoplexy.

—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands. E. F., Coroner of

G. H., I. J., K. L., M. N., O. P. (jurors).

* Certain words referring to the oath to be taken by the Coroner's deputy which were repealed by Act X. of 1872, have been omitted.

† The words within quotations have been substituted by Act IV of 1908.

ACT V OF 1871.**THE PRISONERS ACT 1871.**

The whole of this Act has been repealed by Act III of 1900 except section 15 which runs as follows :—

15. Any warrant of commitment under Regulation III of 1818 of the Bengal Code (*for the confinement of state prisoners*), Regulation II of 1819 of the Madras Code (*for the confinement of state prisoners*), and Regulation XXV of 1827 of the Bombay Code (*for the confinement of state prisoners, and the Attachment of the hands of chieftains and others for reasons of state*), may be directed to the Superintendent in the same manner as the same might have been directed to the sheriff under Act No. XXXIV of 1850 (*for the better custody of state prisoners*) and Act No. III of 1858 (*to amend the law relating to the arrest and detention of state prisoners*.)

ACT XXI OF 1871.

RECEIVED THE G. G.'S ASSENT ON THE 11TH JULY 1871.

An Act to give validity to the operation of the General Regulations and Acts within the Dehra Dun.

WHEREAS it is necessary to give validity to the operation of the
 general Regulations and Acts within the
 district under the Superintendent of the
 Dehra Dun ; * It is hereby enacted as follows :—

Extension of Regulations
 and Acts in force in Saha-
 ranpur to Dehra Dun.

1. The Regulations and Acts now in
 force in the district of Saharanpur are
 hereby declared to extend to the said dis-
 trict of Dehra Dun.†

2. The High Court and the Board of Revenue of the North-
 Western Provinces shall exercise,† respec-
 tively, in the said district, all the powers
 which the said High Court or Board of
 Revenue are at present respectively autho-
 rized to exercise in any part of the North-Western Provinces.

District Court of Saha-
 ranpur deemed District
 Court of Dehra Dun.
 directs.†

3. The District Court of Saharanpur*
 shall be the District Court of such district
 until the Local Government otherwise

Exemption of Jaunsar
 Bawar.
 Jaunsar Bawar.†

4. Nothing in this Act shall apply to
 that portion of the Dehra Dun district called

*Here certain words, repealed by Act XVI. of 1874, have been omitted.

† Here certain words, repealed by Act XII of 1891, Sch. 1, have been omitted.

ACT XXII OF 1871.

The Bengal Chaukidari (Amendment) Act. 1871 *

RECEIVED THE G.-G.'S ASSENT ON THE 1ST AUGUST 1871.

An Act to authorize the extension of the Chaukidari Act to places where there is no Jamadar of Police.

WHEREAS by Act No. XX. of 1856 (*to make better provision for the appointment and maintenance of Police Chaukidars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal*) section two, the Local Government is restrained from extending that Act to any City, Town, Suburb, or Bazar, unless there be therein (or in some other City, Town, Suburb, or Bazar with which the same may be united as thereafter provided) a police-station under an officer of a grade not below that of a Jamadar; and whereas it is expedient to remove such restriction and in other respects to amend the said Act; It is hereby enacted as follows :—

Preamble.

Amendment of section 2, Act No. XX. of 1856. 1. Instead of the 2nd section of the said Act the following shall be read :—

[*Printed supra, p. 174.*]

Amendment of section 11. 2. Instead of section 11 of the said Act, the following shall be read :—

[*Printed supra, p. 175.*]

Amendment of section 38 3. Instead of section 38 of the said Act, the following shall be read :—

[*Printed supra, p. 181.*]

Amendment of section 41. 4. In the 41st section of the said Act, instead of the words "on the 20th of each calendar month," there shall be read the words "on the tenth day after the date fixed for the payment of instalments of the tax."

5. [*Repealed by Act XII. of 1891, Sch. I.*]

Construction
Exemption of Bengal from operation of Act. 6.† This Act shall be read with, and taken as part of, the said Act XX. of 1856.

*Act XXII. of 1871 has been repealed so far as it applies to the United Provinces of Agra and Oudh—Vide Act 18 of 1919.

The short title was given by the Repealing and Amending Act (1. of 1903), Sch I., Pt II.

† In Oudh s. 6 is repealed.—See Act XVIII. of 1876, Sch. II.

ACT XXIII OF 1871.*

Pensions Act.

RECEIVED THE G.-G'S ASSENT ON THE 8TH AUGUST 1871.

An Act to consolidate and amend the law relating to pensions and grants by Government of money or land revenue.

Whereas it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue ; it is hereby enacted as follows :—

Preamble.

NOTES.

The pensions Act is not retrospective in its operation. 2B. 294.

Grant of villages revenue—free not a pension. 18 O. C. 168.

The Act should receive a strict construction. 1 B. 531.

I.—Preliminary.

Short title.

1. This Act may be called "The Pensions Act, 1871 ;"

Extent of Act.

It extends to the whole of British India ;†

Commencement.

And it shall come into force on the date of the passing thereof.‡

* Act XXIII. of 1871 has been declared in force in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (I. of 1899), s. 2 ; in the Arakan Hill District (except ss 1 and 2 and the Schedule) by Reg. (EX. of 1874), s. 2 ; in Upper Burmah (except the Shan States) by Act (XII. of 1898), s. 4 ; and in British Baluchistan by Reg. II of 1913, s. 3.)

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I, p. 504.

The Act applies to certain allowances known as the Oudh Wasikas as if they were pensions of the classes referred to in sections 4 and 11 of the Act.—See Act XXI. of 1886, s. 2.

† It has also been applied to the Hyderabad Assigned Districts, *Gazette of India*, 9th December 1871, p. 951, and (with modifications) to Mysore, *Gazette of India*, 22nd August 1873, p. 759.

‡ Here certain words, repeated by Act XII. of 1891, Sch. I, have been omitted.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule.

Enactments repealed.

But all rules in regard to the award and payment of pensions or grants of money or land-revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith.

Saving of Rules.

3. In this Act, the expression "grant of money or land-revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite, or office.*

Interpretation clause.

II.—Rights to Pensions.

4.† Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government, whatever may have been the consideration of any such pension or grant and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted.

Bar of suits relating to pensions.

NOTES.

Scope—This section prohibits cognizance by a Civil Court of suits, save as provided by this Act 5B. 408 P. O.

The property sought to be proceeded against by the plaintiffs in this case for the satisfaction of the decree was in the nature of a grant of land revenue and the suit was, therefore to be treated as barred by this section. 6B. 737 See also 6B. 209.

This Act is not applicable to an endowment for religious purposes. 2M. 294 ; 5M. 302 ; 31M. 12 ; 21M. 310 ; 7M. 191.

Jagir income is pension within the meaning of this Act 95 P. R. 1906.

A pension granted in lieu of *Soranjam* is impartible 2B 346 ; 16B. 596.

Imam granted by Peshwa falls under this Act. 14 B. 573.

Suit relating to *malikana* dues payable by Government falls under this section. 17A. 1(P. O.).

* 23 Suth. W. R. C. R., 378.

† According to s. 2 of the Oudh Wasikas Act (XXI. of 1886), "the allowances respectively known as the Amanat Wasikas, the Zamanat Wasikas, and the Loan Wasikas, are pensions within the meaning of the Pensions Act (XXIII. of 1871), and that Act shall apply to them, as if they were pensions of the classes referred to in ss. 4 and 11 of that Act."

A suit relating to money payable by Government in lieu of *Sarr Akhars* falls under this section. A. W. N. 1887, 225.

The grant of zemindari, of which the revenue is remitted by the Government is not a pension within the meaning of S. 3. 8A. L. J. 692, 7M. 191 ; 29B. 480 ; 10A. 396.

The word suit in this section does not include execution proceedings. 16B. 731 ; 30B. 101.

S. 4. applies to a heritable right to receive land revenue granted by the Moghul Emperors as reward for services rendered. 25A. 73.

This section requires as a condition precedent a certificate from the Collector or other authorized revenue officer under s. 6, for a Civil Court to have jurisdiction in suits relating to pensions, money grants or, and land revenue conferred by Government independently of whether Government be a party to such suits or not. 1B. 75 ; 31B. 512.

A pension to fall within this section must be granted by Government. 30M. 286.

This section does not require the grant should be of land revenue alone in order to shut out jurisdiction of the Civil court to entertain a suit relating to a grant of land revenue. 23 M. L. J. 687.

A suit to obtain a declaration that the plaintiff is the owner of a share in *despande Kulkarni vatan* consisting of cash allowance falls within this section. 14 Bom. L. R. 938 ; see also 42B. 257 = 20 Bom. L. R. 325.

A suit to recover a share in the *Sordes mukhi* Huq is not maintainable in the absence of a certificate. 22 Bom. L. R. 1176.

Where the grant relates to land as well as revenues the suit is maintainable notwithstanding. 22 Bom. L. R. 959. see also 27 M. L. J. 618 ; 16. M. T. 239.

Agreement by the Government to pay a certain sum of money is a pension within the meaning of this section. 15 C. W. N. 470.

A suit brought in the Court of the political Agent against a Sirdar coming under this section requires a collector's certificate under s. 6. of the Act 17B. 224

A suit by a manager against *imamdar* for the recovery of certain cash allowances is not maintainable under this section. 16 B. 537.

A certificate is necessary before a suit can be decreed for *muafi* land never assessed to land revenue P. L. R. 1900, 125. See also 2 B. 99 (P. C.) 12 M. 98, 4 M. 341 ; 1 B. 531 ; 20 C. 57 ; 6 Bom. L. R. 423.

Suit for declaration of *muafi* rights barred. 12 L. W. 311.

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District, or Deputy Commissioner, or other officer authorized in this behalf by the Local Government, and such Collector, Deputy Commissioner, or other officer shall dispose of such claim in accordance with such rules as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.

6 A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner, or other officer empowered to take cognizance of such claims.

authorized in that behalf that the case may be so tired, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

NOTE.

Where the Collector once gives a certificate, under the Pensions Act, which entitles a party to claim a certain right in a Civil Court then the effect of that certificate is to give to the party the right to claim in a Civil Court whatever he is entitled to in virtue of that right. 5 Bom. L. R. 950. A suit without certificate is not bad *abinitio*. The court is precluded to take cognizance of it unless a certificate is produced. 17B. 169, 32 A. 148 (P. C.)=14 C. W. N. 310

The Revenue Commissioner has no power to revoke or cancel the certificate given by a Collector under this section. 23 B 676

7. Nothing in sections 4 and 6 applies to—

(1) any inam of the class referred to in the first section of Madras Act No. IV. of 1862 ;*

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant-Governors of Bengal and the North-Western Provinces, either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pension shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be used for and recovered in the same manner as any other property.

III.—Mode of payment.

8. All pensions or grants by Government of money or land—
Payment to be made by Collector or other authorized officer. revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer subject to such rules as may from time to time, be prescribed by the Chief Controlling Revenue Authority.

* *I. e.*, "inams of the classes described in clause (1) section 2 [Mad.] Regulation IV, of 1831, which have been or shall be enfranchised by the Inam Commissioner, and converted into freeholds in perpetuity, or into absolute freeholds in perpetuity." The classes so described are hereditary or personal grants of money or of land revenue, however denominated, conferred by the authority of the Governor in Council [or which having been made by any Native Government have been confirmed or continued by the British Government — Act No. XXXI. of 1836] in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zamindaries or palyams forfeited or held under attachment or management by the officers of Government or as a *yaumia* or charitable allowance, or as a pension."

9. Nothing in section four and eight shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government to recover such revenue from the persons liable to pay the same under any law for the recovery of the rent of land.

Saving of right of grantees of land-revenue.

10. The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land revenue to be commuted for a lump sum on such terms as may seem fit.

Commutation of pension.

IV.—Miscellaneous.

11. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities, or, as a compassionate allowance,

Exemption of pension from attachment.

and no money due or to become due on account of any such pension or allowance.

shall be liable to seizure, attachment, or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

NOTES

Pension implies periodical payments of money by the Government to the pensioner in the manner prescribed by S. 8 of the Act. 26 A. 617. A pension is a periodical allowance or stipend granted not in respect of any right, privilege, perquisite or office, but on account of past services or particular merits or as compensation to dethroned princes, their families and dependants, 31A. 382 ; 24 Ind. Cas. 805 An assignment of the revenue of a certain land to the custodian of a shrine for its benefit is not a pension. 27 P. R. 1878. Every grant made for past services is not pension. 11 L. W. 398.

As regards attachment of *wasika* right—vide, 49 Ind. Cas. 511

A political treaty pension or a jagir granted on political consideration cannot be attached. 62 Ind. Cas. 273 ; 62 Ind. Cas. 895.

Pensions not granted by the Indian Government are not exempt from attachment. 26 M. 423 see also 96 P. R. 1906

12. All assignments, agreements, orders, sales, and securities of every kind made by the person entitled to any pension, pay, or allowance mentioned in section eleven, in respect of any money not payable at or before the making thereof on account of any such pension, pay, or allowance, or for giving or assigning any future interest therein, are null and void.

Assignments, &c., in anticipation of pension, to be void.

NOTES

Assignment of pension is void if the assignment is made after the passing of this Act. P. L. R, 1900, 37 ; 6 A, 630, 7 A, 886 ; 86 P R, 1914

13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof, shall be entitled to a reward equivalent to the amount of of such pension for the period of six months.

Reward to informers.

14. The Chief Controlling Revenue Authority may, with the consent of the Local Government, from time to time, make rules consistent with this Act respecting all or any of the following matters:—

Power to make rules.

- (1) the place and times at which, and the person to whom, any pension shall be paid,
- (2) inquiries into the indentivity of claimants.
- (3) records to be kept on the subject of pensions.
- (4) transmission of such records,
- (5) correction of such records,
- (6) delivery of certificates to pensioners,
- (7) registers of such certificates,
- (8) reference to the Civil Court under section six, of persons claiming a right of succession to, or participation in pensions or grants of money or land-revenue payable by Government,

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette all shall thereupon have the force of law.*

NOTES:

This section does not authorise Government or the Board of Revenue to control the discretion given by the Collector by the statute. 25 M. L. J. 155

* See the Bengal rules, *Calcutta Gazette*, 15th September 1875, p. 1144; Madras rules *Fort St. George Gazette*, 3rd August 1875, p. 1335; Bombay rules *Bombay Government Gazette*, 7th August 1873, p. 656; Punjab rules *Punjab Government Gazette*, 16th January 1873, p. 13, 30th October 1873 p. 627, 8th October 1874 p. 348 ; Oudh rules *Oudh Government Gazette*, 19th October 1872 p. 68; Central Provinces rules *Central Provinces Gazette*, 3rd July 1875 Part I A., 123. Rules, dated 28th May 1875, were made under this section, with the sanction of the Local Government by the Board of Revenue North-Western Provinces ; but they have not been published in the *North-Western Provinces Gazette*.

SCHEDULE.

I.—BENGAL REGULATIONS.

Number and year,	Title or subject.	Extent of repeal.
XXIV. of 1793 ...	A Regulation for re-enacting, with Modifications, the Rules passed by the Governor-General in Council on the 10th June 1791, for determining the Continuance or Discontinuance of the Pensions heretofore paid by the Proprietors and Farmers of Land, but included in the Jama or Revenue payable to Government at the Decennial Settlement, and also of the Pensions heretofore paid from the Sair abolished.	The whole.
XXXIV. of 1795 ...	A Regulation for re-enacting, with Modifications, the Rules respecting the Pensions payable from the Government and Mulki Treasuries in the Province of Benares.	The whole.
XXIV. of 1803 ...	A Regulation for trying the Validity of Title of Persons receiving, or claiming a right to receive, Pensions, under the Denominations of Salianah, Rozinah, or any other Description of Grant, in the provinces ceded by the Nawab Wazir to the Honourable the English East India Company.	The whole.
I. of 1804 ...	A Regulation for the better Management of the Invalid Jagirdar Establishments and of the Invalid Pension Establishments.	Sections twenty-three to twenty-six inclusive.
XXII. of 1806 ...	A Regulation for modifying the Rules hitherto observed in the admission and payment of Claim to Pensions.	The whole.
II. of 1811 ...	A Regulation for amending the existing Rules for the Support of Invalid Native Commissioned and Non-Commissioned Officers.	The whole.

I.—BENGAL REGULATIONS—(contd.)

Number and year.	Title or subject.	Extent of repeal.
XI of 1813 ...	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions, and for preventing the Abuses committed in the receipt of Pensions.	The whole.
VI of 1817 ...	A Regulation to explain the Purport and Intent of the Provision contained in section 2, Regulation XXIV., 1803	The whole.

II.—MADRAS REGULATIONS.

1. of 1803 ...	A Regulation for defining the Duties of the Boards of revenue and for determining the extent of the Powers vested in the Board of Revenue.	Section forty-three.
11 of 1803. ...	A Regulation of describing and determining the Conduct to be observed by Collectors in certain Cases.	Section thirty.
IV. of 1831. ...	A Regulation for better securing to the Grantees Personal or Hereditary Grants of Money or of Land-Revenue, conferred by the Government in consideration of Service rendered to the state or in lieu of resumed Offices of privileges, or of Zamindaris, or Paleiyams forfeited or held under Attachment or Management by the Officers of Government or as Yaumias or Pensions.	The whole.

III.—BOMBAY REGULATION

XXIX. of 1827 ...	A regulation for bringing under the operation of the Regulations the Bombay territories in the Dekkan and Khandesh.	Section 6, clauses 2 & 3.
-------------------	---	---------------------------

IV.- Acts

Number and year.	Title or subject.	Extent of repeal.
XXXI. of 1836 ...	Government Grants	The whole.
XXIII. of 1838 ...	Exemption of Grants from attachment.	The whole.
VI. of 1849, ...	An Act for securing Military and Naval Pensions and Superannuation Allowances	The whole.

ACT XXXI OF 1871.

Indian Weights and Measures of Capacity Act.

RECEIVED THE G.—G.'s ASSENT ON THE 30TH OCTOBER 1871.

An Act to regulate the weights and Measures of Capacity of British India.

WHEREAS It is expedient to provide for the ultimate adoption of an uniform system of Weights and Measures of Capacity throughout British India; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

1. This Act may be called "The Indian Weights and Measures of Capacity Act, 1871," and extends to the whole of British India.

Short title.

Local extent.

II.—Standards.

2. The primary standard of weight shall be called a seer, and shall be a weight of metal in the possession of the Government of India, equal, when weighed in a vacuum, to the weight known in France as the Kilogramme des Archives.

Standard of weight.

3. The units of weight and of measures of capacity, shall be—

Units of weights and measures of capacity.

for weights, the said seer ;

for measures of capacity, a measure containing one such seer of water at its maximum density, weighed in a vacuum.

4. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,* declare the magnitude and denominations of the weight and measures of capacity, other than the said units to be authorized

Special weights and measures of capacity may be authorized.

under this Act:

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid.

The Governor-General in Council may, in like manner, revoke such notification.

* No Notifications have as yet been issued under this' any of the other sections of this Act.

Unless it be otherwise ordered in any such notification, the sub division of all such weights and measures of capacity shall be expressed in decimal parts.

5 The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,
Districts how defined. define the limits of districts for the purposes of this Act.

The Local Government may, from time to time, by notification in the official Gazette, define the
Sub districts how defined. limits of sub-districts for the purposes of this Act.

6. The Governor-General in Council may provide, for such districts as he thinks fit, proper primary
Primary standards to be provided. standards and sets of the said authorized weights and measures of capacity.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

7. The Local Government may provide, for such sub-districts as it thinks fit, copies of such of the said
Local standards to be provided. authorized weights, and measures of capacity as shall be necessary to serve as local standards in such sub-districts.

Such local standards shall be deemed correct, until they are proved to be otherwise.

III.—Use of New Weights and Measures of Capacity.

8. Whenever the Governor-General in Council considers that proper standard weights and measures of
Use of new weights and measures of capacity in Government offices &c. capacity have been made available for the verification of the weights and measures of capacity to be used by any Government office or municipal body or railway company, the Governor-General in Council may by notification in the *Gazette of India*, direct that after a date to be fixed therein, all or any of the weights and measures of capacity, authorized as aforesaid, shall be used in dealings and contracts by such office, body, or company ; and may, in like manner, from time to time, alter or revoke such direction.

9. After the date fixed in any notification under section eight all dealings and contracts had and made
Contracts by weight or measures of capacity. by the officers, bodies, or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measures of capacity, shall, in the absence of special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification to be used by such officers, bodies, or companies.

IV.—Wardens.

10. The Governor-General in Council and the Local Government, respectively, shall appoint Wardens for the custody of the primary and local standards and sets of authorized Weights and Measures of Capacity hereinbefore mentioned.

The Governor-General in Council or the Local Government, respectively, may, at any time, suspend or remove any such Warden, and appoint another.

11. The Governor-General in Council may, from time to time, make rules consistent with this Act for regulating the following matters:—

- (a) —The appointment of Wardens ;
- (b) —The guidance of Wardens in all matters connected with the performance of their duties ;
- (c) —The provision, replacement, custody and use of the standards ;
- (d) —The method of verifying local standards and weights weighing machines, and measures of capacity authorized under this Act, and balances and of certifying such verification ; provided that such verification shall not be required to be made oftener than once in two years ;
- (e) —The errors which may be tolerated in weights weighing machines ; and measures of capacity authorized under this Act and in balances ;
- (f) —The shapes, proportions, and dimensions to be given to weights, weighing machines, and measures of capacity authorised under this Act, and to balances, and the materials of which they may be made ,
- (g) —Marking weights and measures of capacity authorized under this Act with their several denominations ;
- (h) —The conditions under which Government Offices municipal bodies, and railway companies shall be subject to inspection and verification of the weights, weighing machines and measures of capacity authorized under this Act, and of the balances used by them ;
- (i) —The fees to be paid for verifying, correcting, and certifying the verification of weights, weighing machines, and measures of capacity authorized under this Act, of balances ;

Publication of rules. **12.** Such rules shall be published in the *Gazette of India*.

And the Governor-General in Council may by notification in the *Gazette of India* declare that from and after a day to be named therein all or any of the said rules shall come into force in respect of any Government office municipal body, or railway company, and thereupon, to the extent specified in such notification such rules or rule shall have the force of law.

Rules, when specially applied, to have force of law.

13. All officers of Government municipal officers and officers and servants of railway companies, shall comply with such rules so far as they concern them, and pay such fees as the said rules shall prescribe.

Officers of Government and others to comply with rules.

14. The Warden may deface, or render incapable of use, or refuse to verify, correct or mark, anything brought to him for verification or correction which appears to him unfit for verification or correction.

Warden may refuse to verify or correct things unfit.

15. Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the Local Government may from time to time appoint,

Exercise of any of Warden's powers.

16. Whoever knowingly counterfeits any mark used by a Warden under section eleven, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Counterfeiting Warden's marks.

17 The Local Government may, from time to time, prepare tables of the equivalents of weights and measures of capacity, other than those authorized under this Act, in terms of the weights and measures of capacity so authorized, and the equivalents so stated, after notification in the local official Gazette, shall be deemed the true equivalents.

Tables of equivalents.

ACT NO. I. OF 1872.*

The Indian Evidence Act, 1872.

RECEIVED THE G.—G'S ASSENT ON THE 15TH MARCH 1872.

Preamble. WHEREAS it is expedient to consolidate, define and amend the Law of Evidence ;
It is hereby enacted as follows :—

PART I.—RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

Short title. 1. This Act may be called "The Indian Evidence Act, 1872."

* For the Statement of Objects and reasons, see *Gazette of India*, 1868, p. 1574 ; for the Draft or Preliminary Report of the Select Committee, dated 31st March 1871, see *ibid*, 1871, Pt. V. p. 273 ; and for the Second Report of the Select Committee dated the 30th January 1872, see *ibid*, 1872, Pt. V. p. 34 ; for discussion in Council, see *ibid*, 1868, Supplement, pp. 1060 and 1209 ; *ibid*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid*, 1872, pp. 136 and 230.

Act I. of 1872 has been declared in force in Upper Burma generally except the Shan States with an addition by Act (XIII. of 1898), s. 4 ; in the Hill District of Arakan, by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3 and Reg. I of 1913 s. 2 ; in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3 ; in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872), as amended by Reg. (III of 1899), s. 3 ; in Angul and the Khondmals, by the Angul District Regulation (I. of 1894), s. 3 ; and Reg. III of 1913 s. 3 ; in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill District Regulation (I of 1895), s. 3 ; in the Chin Hills, as regards Hill tribes, by the Chin Hills Regulation (V. of 1896), s. 3 ; and in the Chittagong Hill-tracts by Regulation (I. of 1900) s. 4 ; also, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), in the following Scheduled Districts, namely: The Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum, and in the Kolhan in the District of Singhbhum, (see *Gazette of India*, 1881, Pt. I, p. 504) ; and in the North Western Provinces Tarai (see *ibid* 1876, Pt. I., 505). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

So much of this Act as relates the General Clauses Act (I. of 1869) was repealed by the General Clauses Act (X. of 1897).

It extends to the whole of British India, and applies to all
 Extent. judicial proceedings in or before any Court,
 including Courts-martial, * "other than
 Courts martial convened under the Army Act" † but not to
 Commencement of Act. affidavits ‡ presented to any Court or officer,
 not to proceedings before an arbitrator ; and
 it shall come into force on the first day of September 1872.

2. On and from that day the following
 Repeal of enactments. laws shall be repealed :—

- (1) all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India ;
- (2) all such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of " The Indian Councils Act, 1861," § in so far as they relate to any matter herein provided for ; and
- (3) the enactments mentioned in the schedule hereto, to the extent specified in the third column of the said
 *, schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

3. In this Act the following words and expressions are used
 Interpretation-clause. in the following senses, unless a contrary
 intention appears from the context :—

* See the Army Act (44 & 45 Vict., c. 58), s. 127, which is as follows:—

"A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respect any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872 or to any other matter or whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act law, or ordinance of any Legislature whatsoever, other than the parliament of the United Kingdom."

Act I. of 1872 is (subject to such modifications as the Governor-General in Council may direct) applicable to all proceedings before Indian Marine Act (XIV. 1887), s. 68.

† The words within quotations have been inserted by Act 18 of 1919.

‡ The Civil Procedure Code regulates matters to which affidavits are confined.—See Act V. of 1908, c. 19, r. 1 to 3 and s. 139 ; see also the Code of Criminal Procedure (Act V. of 1898), s. 539.

§ 24 & 25 Vict., c. 67.

“ Court ” includes all Judges* and Magistrates,† and all persons, except arbitrators, legally authorized to take evidence.

“ Fact.” “ Fact ” means and includes—

- (1) anything, state of things, or relation of things capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.

Illustrations

- (a.) That there are certain objects arranged in a certain place is a fact.
- (b.) That a man heard or saw some thing is a fact.
- (c.) That a man said certain word is a fact.
- (d.) That a man holds a certain opinion, has a certain intention, acts in good faith fraudulently, or uses a particular sense, or is or was at a specified time, conscious of a particular sensation is a fact.
- (e.) That a man has a certain reputation is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

The expression “ facts in issue ” means and includes—

any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right liability or disability asserted or denied in any suit or proceeding, necessarily follows.

Explanation—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,‡ any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.§

Illustrations.

A is accused of the murder of B.
At his trial the following facts may be in issue :—
that A caused B's death ;
that A intended to cause B's death ;
that A had received grave and sudden provocation from B ;
that A, at the time of doing the act which caused B's death was, by reason of unsoundness of mind, incapable of knowing its nature.

* Of the Code of Civil Procedure (Act V of 1908). s. 2, the Indian Penal Code (Act XLV. of 1860) s. 19, and “ District Judge ” the General Clauses Act (X of 1897), s. 3 (15).

† Of the General Clauses Act (X of 1897) section 3 (31) and the Code of Criminal Procedure (Act V. of 1198), s. 3 (2).

‡ See now the Code of Civil Procedure (V. of 1908) s. 3 (2).

§ With reference to the Settlement of Issues, see the Code of Civil Procedure (Act V. of 1908),

"Document"* means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing † is a document .

Words printed, lithographed, or photographed are documents :

A map or plan is a document :

An inscription on a metal plate or stone is a document :

A caricature is a document.

"Evidence" means and includes—

"Evidence."

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry :

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court :

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Disproved."

A fact is said not to be proved when it is neither proved nor disproved.

"Not-proved."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

"May presume"

* Cf. s. 29 of the India Penal Code (Act XLV. of 1860) and s. 8 (16) of the General Clauses Act (X. of 1897).

† Cf. definition of "writing," s. 3, (58), the General Clauses Act (X. of 1897,) and of s. 21, the Indian Stamp Act (II. of 1899.)

** See also "write," s. 4(7), of the Inventions and Designs Act (V. of 1898).

Whenever it is directed by this Act that the Court shall
 “Shall presume” presume a fact, it shall regard such fact as proved, unless and until it is disproved.

When one fact is declared by this Act to be conclusive proof
 “Conclusive proof.” of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER.—II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue and of such other facts as are herein-after declared to be relevant, and of no others.
 Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure,*

Illustrations.

(a.) As is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue.—

A's beating B with the club ;

A's causing B's death by such beating ;

A's intention to cause B's death.

* (b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place, or at different times and places.
 Relevancy of facts forming part of same transaction.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or by the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction though A may not have been present at all of them.

* See now Act V. of 1908.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a) The question is whether A robbed B.

The facts that shortly before the robbery B went to a fair with money in his possession and that he showed it, or mentioned the fact that he had it to third person are relevant.

(b) The question is, whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, wheather A poisoned B.

The state of B's health before symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein, or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences, or is influenced by, any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements ; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2....When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a.) A is tried for the murder of B:

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public are relevant

(b) A sues B upon a bond for the payment of money B denies the making of the bond.

The fact, that at the time when the bond was alleged to be made B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B, by poison.

The fact that before the death of B, A procured poison similar to that which was administered to B is relevant.

(d.) The question is whether a certain document is the will of A.

The facts that not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve are relevant.

(e.) A is accused of a crime:

The facts that either before or at the time of, or after, the alleged crime A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it are relevant.

(f.) The question is, whether A robbed B;

The facts that, after B was robbed, C said in A's presence—"The police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(g.) The question is, whether A owes B Rupees 10,000 :

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, "I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(h.) The question is, whether A committed a crime :

The fact that A absconded after receiving letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime .

The facts that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished .

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

(k.) The question is, whether A was robbed :

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that he said that he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant—
as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant, in so far as they are necessary for that purpose.

Illustrations.

(a) The question is whether a given document is the will of A :

The state of A's property and of his family at the date alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true .

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particular of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant, if it affected the relations between A and B.

(c.) A is accused of a crime :

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to, and affected by, facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly,

The details of the business on which he left are not relevant, except, in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, "I am leaving you because B has made me a better offer;" This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it: "A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for riot, and is proved to have marched at the head of a mob ;

The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H, giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy, or after he left it.

When facts not otherwise relevant become relevant

11. Facts not otherwise relevant are relevant—

(1) If they are inconsistent with any fact in issue or relevant fact ;

(2) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day :

The fact that on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible that he committed it, is relevant.

(b.) The question is, whether A committed a crime :

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of right or custom, the following facts are relevant—

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence;
- (b) particular instances in which the right or custom was claimed, recognized, or exercised or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether A has a right to a fishery: A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father a subsequent grant of the fishery by A's father irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours are relevant facts.

14. Facts showing the existence of any state of mind such as intention knowledge, good faith, negligence, rashness, ill-will or good-will, towards any particular person, or showing the existence of any such state of mind, or body or bodily feeling, is in issue or relevant.

**Explanation. 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally but in reference to the particular matter in question.

**Explanation. 2.*—But, where upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact,†

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article:

The fact that, at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen

(b.) ‡ A is accused of fraudulently delivering to another person a counterfeit coin which at the time when he delivered it he knew to be counterfeit.

* These *Explanation* have been substituted for the original by the Indian Evidence Act (1872) Amendment Act. (III of 1891), s. 31.

† See the Code of Criminal Procedure (Act V. of 1898.), s. 31.

‡ The present *Ill. (b)* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III of 1891) s. 1 (§).

The fact that at the time of its delivery A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit, is relevant.*

(c.) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B are relevant.

(d.) The question is, whether A the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the manner before they could have been transmitted to him by the payee had been a real person is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B ;

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss :

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B upon a house of which A is owner by the order of C, a contractor :

A's defence is that B's contract was with C :

The fact that A paid C for the work in question is relevant as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found

The fact that public notice of the loss of the property had been given in the place where A was, is relevant as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him .

In order to show A's intent, the fact of A's having previously shot at B, may be proved.

(j) A is charged with sending threatening letters to B :

Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife or child?

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is, whether A's death was caused by poison :

* Compare s. 311 of the Code of Criminal Procedure (Act V. of 1898).

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected :

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured :

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead :

The fact that A, on other occasions shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime ;

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention,* the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional, or done with a particular knowledge or intention.

Illustrations.

(a.) A is accused of burning down his house in order to obtain money for which it is insured :

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amount received by him. He makes an entry showing that on a particular occasion, he received less than he really did receive.

The question is, whether this false entry was accidental or intentional :

The facts that other entries made by A in the same book are false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the rupee was accidental :

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to B was not accidental.

* In s 15, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 2.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is relevant fact.

Existence of course of business when relevant.

Illustration.

(a.) The question is whether a particular letter was despatched :

The fact that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is, whether a particular letter reached A .

The fact that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

18. Statements made by a party to the proceeding, or by an agent to any such party whom the Court regards, under the circumstances of the case, as expressly authorized by him to make them, are admissions.

Admission—by party to proceeding or his agent ;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

by suitor in representative character ,

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by party interested in subject-matter.

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

by person from whom interest derived.

are admissions if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to liability.

Illustration.

A undertakes to collect rents for B.
 B sues A for not collecting rent due from C to B.
 A denies that rent was due from C to B.
 A statement by C that he owed B rent is an admission and is a relevant fact as against A if A denies that C did owe rent to B.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.
 A says to B, "Go and ask C ; C knows all about it ." C's statement is an admission.

21. Admissions are relevant and may be proved as against the persons who makes them, or his representative in interest ;* but they cannot be proved by or on behalf of the person who makes them, or by his representative in interest except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it when it is of such a nature that if the person making it were dead, it would be relevant as between third person under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of statement of the existence of any state of mind or body, relevant or in issue made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it; if it is relevant otherwise than as an admission.

* 4 Suth. W. R. 148.

Illustrations

(a.) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine ; B that it is forged:

A may prove a statement by B that the deed is genuine and B may prove a statement by A that the deed is forged. But A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her way.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself, and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit-coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it, and told him it was genuine :

A may prove these facts for the reasons stated in the last preceding illustration

22. Oral admissions as to the contents of a document are when oral admissions as to contents of documents are relevant not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23 In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement,* threat or promise, having reference to the charge against the accused person, proceeding from a person in authority† and sufficient in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that, by making it, he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession caused by inducement, threat, or promise, when relevant in criminal proceeding

25. No confession made to a police-officer‡ shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a magistrate, shall be proved as against

such person.

Explanation. §—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is Magistrate exercising the powers of a Magistrate under Code of Criminal Procedure, 1882. ||

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

How much of information received from accused may be proved.

28. If such a confession as is referred to in section 24 is made after impression caused by any such inducement, threat, or promise has in the opinion of the Court, been fully removed, it is relevant,

* For prohibition of such inducements, & see the Code of Criminal Procedure (Act V. of 1898), s. 343.

† 9 Bom. H. C. R. 358.

‡ In s. 25, as in force in Upper Burma, the words, "who is not a Magistrate," shall be deemed to have been inserted after "police officer" [see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (c)] As to statement made to a police-officer investigating a case, see the Code of Criminal Procedure (Act V. of 1898), ss. 161 and 162.

§ This Explanation has been added to s. 26 by the Indian Evidence Act (1872) Amendment Act (VII. of 1891), s. 3.

|| Act X. of 1882.—But see now the new Code of Criminal Procedure (Act V. of 1898).

29. If such a confession is otherwise relevant, it does not become irrelevant, merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

** Explanation.*—“Offence,” as used in this section, includes the abetment of, or attempt to commit, the offences.†

Illustration.

A and B are jointly tried for the murder of C. It is proved that A said “B and I murdered C.” The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, “A and I murdered C.”

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31 Admissions are not conclusive proof of the matters admitted but they may operate as estopples under the provisions hereinafter contained.

Admissions not conclusive proof but may estop

32. Statements written or verbal of relevant facts, made by a person who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases;—

Cases in which statement of relevant fact by person, who is dead or cannot be found &c., is relevant

** This Explanation has been inserted in s. 30 by the Indian Penal Code (1862) Amendment Act (III of 1891), s. 4.*

† Compare Explanation 4 to s. 108 of the Indian Penal Code (Act XLV. of 1860).

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death.

Such statements are relevant whether the person who made them was or was not at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement, written or signed by him of the receipt of money, goods, securities, or property of any kind ; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him,

or is made in course of business.

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or against interest of maker.

(4) When the statement gives the opinion of any such person, as to the existence of any public or general interest, of the existence of which if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

or gives opinion as to public right or custom, or matters of general interest,

(5) When the statement relates to the existence of relationship "by blood, marriage, or adoption"* between persons as to whose relationship "by blood, marriage, or adoption"* the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or relates to existence of relationship.

(6) When the statement relates to the existence of any relationship "by blood marriage or adoption"* between persons deceased and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged,

or is made in will or deed relating to family affairs;

* In s. 32 cls (5) and (6), the words quoted have been inserted by the Indian Evidence Act (1872) Amendmet Act (XVIII. of 1872), s. 2.

or in any family-pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

Or in document relating to transaction mentioned in section 13, clause (a) ;

(7) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (a.)

Or is made by several persons, and expresses feelings relevant to matter in question

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a) The question is, whether A was murdered by B ; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B ; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow :

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth :

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day :

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day :

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land :

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day :

The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship :

A protest made by the captain, whose attendance cannot be procured, is a relevant fact :

(i) The question is, whether a given road is a public way :

A statement by A, a deceased headman of the village, that the road was public is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market :

A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(h) The question is, whether A, who is dead, was the father of B :

A statement by A that B was his son is a relevant fact.

(i) The question is, what was the date of the birth of A :

A letter from A's deceased father to a friend, announcing the birth of A on a given day is a relevant fact.

(m.) The question is, whether, and when, A and B were married :

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character : The remarks of a crowd of spectators on these points may be proved.

33.* Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it,

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts, which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest :

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34.† Entries in books of account, regularly kept in the course

Entries in books of account when relevant.

of business, are relevant whenever they refer to a matter into which the Court has to enquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

* This section of the Evidence Act has been overridden by Act XIV of 1908 s. 13.

† Compare s. 198 of the Indian Companies Act (VI. of 1882) as to admissibility in evidence of certified copies of entries in Bankers' books, and s. 4 of the Bankers' Books Evidence Act (XVIII. of 1891), *infra*.

Illustration.

A sues B for Rs. 1,000, and shows entries in this account-books showing B to be indebted to him to this amount : The entries are relevant but are not sufficient, without evidence, to prove the debt.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty, specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of the Governor-General of India in Council, or of "any other legislative authority in British India constituted for the time being under the Indian Councils Act, 1861, the Indian councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861, to 1909"* or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.†

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of

* The words within quotations have been substituted by Act 10 of 1914.

† Certain words after this have been omitted having been repealed by Act 10 of 1914.

so much, and no more, of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGEMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order, or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognizance of suit, or to hold such trial.

Previous judgements relevant to bar a second suit or trial.

41. A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of certain judgments in probate, &c., jurisdiction.

Such judgment, order, or decree, is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, "order or decree" declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, "order, or decree" declares that it had been or should be his property.

* In s. 41, the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 8.

42. Judgments, orders, or decrees, other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgment, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

Illustrations.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

judgment, &c., other than those mentioned in sections 40 to 42, when relevant.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C, in each case, says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or is neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's life-time. C says that she never was A's wife.

The Judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e)† A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f)† A is tried for the murder of B. The fact that B prosecuted A for libel, and that A was convicted and sentenced, is relevant under section 8 as showing the motive for the fact in issue.

44. Any party to a suit or other proceeding may show that any judgment, order, or decree, which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud, or collusion in obtaining judgment, or incompetency of Court may be proved.

†To s. 43. *Illustrations* (e) and (f) have been added by the Indian Evidence Act (1872) Amendment Act (I, of 1891), s. 5.

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

45.† When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting *or finger-impressions*, the opinions upon that point of persons specially skilled in such foreign law, science, or art, "or in questions as to identity of handwriting" *or finger-impressions*, are relevant facts,

Opinion of experts

Such persons are called experts.

Illustrations.

(a.) The question is, whether the death of A was caused by poison :
The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b.) The question is whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law :

The opinions of expert upon the question whether the symptoms exhibited by A commonly show unsoundness of mind and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A :

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Facts bearing upon opinion of experts.

Illustrations.

(a.) The question is, whether A was poisoned by a certain poison :
The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall :

The fact that other harbour similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Opinion as to hand-writing when relevant.

† In s. 45 the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 4, and the *italics* have been inserted by the Indian Evidence Act (V. of 1899), s. 27.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person to write, or when he has received documents purporting to be written by that person in answer to a document written by himself or under his authority, and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta who has written letters addressed to A, and received a letter purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon :

The opinions of B, C, and D, on the question whether the letter is in the handwriting of A, are relevant, though neither B, C, nor D, ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or, right, of persons who would be likely to know of its existence, if it existed, are relevant.

Explanation .—The expression, "general custom or right," includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. When the Court has to form an opinion as to—

Opinion as to usages, tenets, &c., when relevant.

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts, or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of the knowledge on the subject is a relevant fact:

Opinion on relationship
when relevant.

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,* or in prosecutions under section 494, 495, 497, or 498. of the Indian Penal Code.†

Illustrations.

(a.) The question is, whether A and B were married : The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b) The question is, whether A was the legitimate of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant the grounds on which such opinion is based are also relevant.

Grounds of opinion
when relevant.

Illustrations.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character
to prove conduct imputed,
irrelevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

In criminal cases previ-
ous good character relevant.

54. † In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Previous bad character
not relevant, except in re.
ply.

* Act IV. of 1869.

† Act XLV. of 1890.

Section 54 has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 6.

Explanation .1—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.
Character as affecting damages.

Explanation.—In sections 52, 53, 54 and 55 the word “character” includes both reputation and disposition, but, *except as provided in section 54** evidence may be given only of general reputation and general disposition, and not of particular act by which reputation or disposition were shown

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

56. No fact of which the Court will take judicial notice need be proved.
Fact judicially noticeable need not be proved.

57. The Court shall take judicial notice of the following facts:—
Facts of which Court must take judicial notice

(1) all laws or rules having the force of law, now or heretofore in force, or hereafter to be in force, in any part of British India ;

(2) all public Acts passed or hereafter to be passed by Parliament to be judicially noticed ;

(3) Articles of war for Her Majesty’s Army or Navy ;

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act † or any other law for the time being relating thereto :

Explanation—The word “Parliament,” in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland ;

(2) the Parliament of Great Britain ;

(3) the Parliament of England ;

(4) the Parliament of Scotland ; and

(5) the Parliament of Ireland ;

*In the *Explanation* to s. 55, the italicized words have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 7.

† Stat 25 & 25 Vict, c. 67.

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland ;

(6) all seals of which English Courts take judicial notice ; the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General* or any Local Government in Council ; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public ; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India ;

(7) the accession to office, names, titles, functions, and signatures of the persons filling, for the time being, any public office in any part of British India if the fact of their appointment to such office is notified in the Gazette of India, or in the official Gazette of any Local Government ,

(8) the existence, title, and national flag of every State or Sovereign recognized by the British Crown ,

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette ;

(10) the territories under the dominion of the British Crown ;

(11) the commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons ;

(12) the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it ;

* (13) the rule of the road "on land or at sea"†

In all these cases,‡ and also on matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

* For lists of such Courts, see the notifications printed on pp. 372 to 374 of the Western India Volume of the Lists of British Enactments in force in Native States.

† The words quoted in s. 57, para. (13), have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII of 1872), s. 5.

‡ For an additional case, see the Code of Civil Procedure (Act V of 1908) s. 84.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings .

Facts admitted need not be proved

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE

59. All facts, except the contents of documents, may be proved by oral evidence.

Proof of facts by oral evidence.

60. Oral evidence must, in all cases whatever, be direct ; that is to say,—

Oral evidence must be direct.

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense, or in that manner ;

if it refers to an opinion, or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable;

Provided, also, that if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.—OF DOCUMENTARY EVIDENCE

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation. 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained ;*
- (2) copies made from the original by mechanical processes which, in themselves, insure the accuracy of the copy, and copies compared with such copies ;
- (3) copies made from or compared with the original ;
- (4) counterparts of document as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

* See s. 76, *infra*.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of letter made by a copying-machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying-machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence. **64.** Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given. **65.** Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when after the notice mentioned in section 66 such person does not produce it ;

(b) when the existence condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest ;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect produce it in reasonable time ;

(d) when the original is of such a nature as not to be easily moveable ;

(e) when the original is a public document within the meaning of section 74 ;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India to be given in evidence ;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (b), and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examinations of such documents.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the "party in whose possession or power the document is, "or to his attorney or pleader,"* such notice to produce it as is prescribed by law ; and, if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case ;

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

- (1) when the document to be proved is itself a notice ;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it ;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;
- (4) when the adverse party or his agent has the original in Court ;
- (5) when the adverse party or his agent admitted the loss of the document ;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

* In s. 66, the words quoted have been inserted by Act XVIII of 1872, s. 6.

67. If a document is alleged to be signed or to have been written, wholly or in part, by any person, the signature or the hand-writing of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of signature and handwriting of person alleged to have signed or written document produced.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court, and capable of giving evidence.

Proof of execution of document required by law to be attested

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by their evidence.

Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Proof of document not required by law to be attested.

73. In order to ascertain wheather a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved for any other purpose.

Comparison of signature writing, or seal, with others admitted or proved.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

*This section applies also, with any necessary modifications to finger impressons.**

* In s. 73, the last paragraph has been added by the Indian Evidence Act (V, of 1899), s. 3 (2)

PUBLIC DOCUMENTS.

Public documents **74.** The following documents are public documents :

1. Documents forming the Acts, or records of the Acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.
- 2 Public records kept in British India of private documents.

Private documents **75.** All other documents are private.

76. Every public officer having the custody of a public document which any person has right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official document. **78.** The following public documents may be proved as follows :—

(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any Local Government, or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2) The proceedings of the Legislatures—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government—

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer :

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council :

(5) The proceedings of a municipal body in British India—

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body ,

(6) Public documents of any other class in a foreign country—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or Diplomatic Agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to documents

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine :

Presumption as to genuineness of certified copies.

Provided that such document is substantially in the form, and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

Presumption as to documents produced as record of evidence.

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true ; and that such evidence, statement, or confession, was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette, or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law, and is produced from proper custody.

Presumption as to gazettes, newspapers, private Acts of Parliament and other documents.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to document admissible in England without proof of seal or signature.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate ; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of the country,
Presumption as to collections of laws and reports of decisions.
 and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.
Presumption as to powers of attorney.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty, or of the Government of India, "in or for" such country to be the manner commonly in use in that country for the certification of copies of judicial records.
Presumption as to certified copies of foreign judicial records.

An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place. †

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.
Presumption as to books, maps, and charts.

88. The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for
Presumption as to telegraphic messages.

* In s 86 the words quoted have been substituted, 'for the words "residence in," by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s 8.

† In s. 86, as amended by s. 8. of the Indian Evidence Act (1872) Amendment Act (III. of 1891), the italicized paragraph has been substituted for the amended paragraph by the Indian Evidence Act (V. of 1899), s. 4,

transmission at the office from which the message purports to be sent ; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

89.—The Court shall presume that every document called for, and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Presumption as to documents thirty years old.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be ; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c.) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence* shall be given in proof of the terms of such

Evidence of terms of contracts, grants, and other dispositions of property reduced to form of document

* Evidence may, however, be taken where a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed.—See the Code of Criminal Procedure (Act V. of 1898), s. 533.

contract, grant, or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills “admitted to probate in British India”* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved,

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved

(d.) A contracts in writing with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo ;
The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment ,
The evidence is admissible.

92. When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from its terms.

* These words in s. 91. *Exception 2.* have been substituted, for the words “under the Indian Succession Act,” by the Indian Evidence Act Amendment Act (XVIII of 1872, s. 7.

Proviso 1.—Any fact may be proved which would invalidate any document, *or* which would entitle any person to any decree or order relating thereto : such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want *or** failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the decree of formality of the document,

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition for property may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso 5.—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved : Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a.) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved,

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c.) An estate, called "the Rampur tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved,

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

* In s. 92, *Prov. 1.* the italicized word "*or*" has been substituted for the word "*of*" by s. 8 of the Indian Evidence Act (1872) amendment Act (XVIII of 1872).

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words "Bought of A a horse for Rs 500," B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month'. A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that the Board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of Evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning, or supply its defects.

Illustrations.

(a.) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs. 1,500." Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustration.

A sells to B by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place, and of a different size.

95. When language used in a document is plain in itself but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning in reference to existing facts.

Illustration.

A sells to B, by deed "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustration.

(a) A agrees to sell to B for Rs. 1,000 "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b). A agrees to accompany B to Haidrabad. Evidence may be given of facts showing wheather Haidrabad in the Deccan or Haidrabad in Sindh was meant.

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible character, &c.

Illustrations.

A, a sculptor, agrees to sell to B "all my mods." A has both models and modelling tools. Evidence may be given to show, which he meant to sell.

99. Persons, who are not parties to a document or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement, varying the terms of the document,

Who may give evidence of agreement - varying terms of document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100 Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that A has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies, to be true ;

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

On whom burden of proof lies.

Illustrations.

(a.) A sues B for land of which B is in possession, and which A asserts was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Burden of prove as to particular fact.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(a.) A wishes to prove a dying declaration by B : A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document:

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

Illustrations

(a.) A, accused of murder, alleges that by reason of unsoundness of mind, he did not know the nature of the Act.

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation he was deprived of the power of self-control.

The burden of prove is on A.

(c.) Section 325 of the Indian Penal Code provides that, whoever except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishment.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

106. When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact specially within knowledge.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket: The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.
 Burden of proving death of person known to have been alive within thirty years.

108. "Provided that,"* when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is *shifted to*† the person who affirms it.
 Burden of proving that person is alive who has not been heard of for seven years.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships, respectively, is on the person who affirms it.
 Burden of proof as to relationship in the cases of partners, landlord and tenant, principal, and agent.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.
 Burden of proof as to ownership.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.
 Proof of good faith in transactions where one party is in relation of active confidence.

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

* In s 108, the words quoted have been inserted by s. 9, Act XVIII., 1872.

† In s. 108, the italicized words have been substituted for the word "on," by s. 9, Act XVIII., 1872.

(h.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son : The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was as born during the continu-
 Birth during marriage ance of a vaild marriage between his mother
 conclusive proof of legiti- and any man, or within two hundred and
 macy. eighty days after its dissolution, the mother
 remaining unmarried, shall be conclusive proof that he is the
 legitimate son of that man, unless it can be shown that
 the parties to the marriage had no access to each other at any
 time when he could have been begotten.

113. A notification in the Gazette of India that any portion
 of British territory has been ceded to any
 Proof of cession of terri- Native State, Prince, or Ruler,* shall be con-
 tory. clusive proof that a valid cession of such
 territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which
 it thinks likely to have happened, regard
 Court may persume exis- being had to the common course of natural
 tence of certain facts. events, human conduct, and public and
 private business, in their relation to the facts of the particular
 case.

Illustrations.

The Court may presume—

(a.) that a man who is in possession of stolen goods soon after the theft
 is either the thief, or has received the goods knowing them to be stolen, unless
 he can account for his possession ;

(b.) that an accomplice is unworthy of credit unless he is corroborated in
 material particulars ;

(c.) that a bill of exchange, accepted or endorsed, was accepted or endor-
 sed for good consideration ;

(d.) that a thing or state of things which has been shown to be in exis-
 tence within a period shorter than that within which such things or state of
 things usually cease to exist, is still in existence.

(e.) that judicial and official acts have been regularly performed ;

(f.) that the common course of business has been followed in particular
 cases ;

(g.) that evidence which could be and is not produced would, if produced,
 be unfavourable to the person who withholds it ;

(h.) that, if a man refuses to answer a question which he is not compelled
 to answer by law, the answer, if given, would be unfavourable to him ;

(i.) that, when a document creating an obligation is in the hands of the
 obligor, the obligation has been discharged.

* See, for example, *Gazette of India*, Jan. 4, 1873, Pt. 1., p. 2.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it.—

as to illustration (a)—a shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to illustration (b).—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery, B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself ;

as to illustration (b)—a crime is committed by several persons A, B, and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable ;

as to illustration (c)—A, the drawer of a bill of exchange, was a man of business B the acceptor, was a young and ignorant person, completely under A's influence ;

as to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course ;

as to illustration (e)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances ;

as to illustration (f)—the question is, whether a letter was received ; it is shown to have been posted, but the usual course of the post was interrupted by disturbances ;

as to illustration (g)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family ;

as to illustration (h)—a man refuses to answer a question which he is not compelled by law to answer but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked ;

as to illustration (i)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title: He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of tenant ;
and of licensee of person in possession.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment, or grant such license.

Estoppel of acceptor of bill of exchange, bailee, or licensee

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES,

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Who may testify.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written, and the signs made, in open Court. Evidence so given shall be deemed to be oral evidence.

Dumb witnesses.

120. In all civil proceedings the parties to the suit and the husband or wife of any party to the suit, shall be competent witnesses. In the criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Parties to civil suit and their wives or husbands
Husband or wife of person under criminal trial

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate ; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Judges and magistrates

Illustrations

(a.) A on his trial before the Court of Session, says that a deposition was improperly taken by B the Magistrate. B cannot be compelled to answer question as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Session Judge. B may be examined as to what occurred.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married ; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Communications during marriage.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit.

Evidence as to affairs of State.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Official communications.

125.* No Magistrate or police-officer† shall be compelled to say whence he got any information as to the commission of any offence and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue.

126. No barrister, attorney, pleader, or vakil shall at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course, and for the purpose, of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course, and for the purpose, of his professional employment, or to disclose any advice given by him to his client in the course, and for the purpose, of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal‡ purpose ;

(2) any fact observed by any barrister, pleader, attorney, or vakil in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,§ attorney, or vakil, was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney, "I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

* Substituted by Act III. of 1887 for the section originally enacted.

† All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second in Command of military police in Burma.—See the Burma Military Police Act (XV. of 1887), s. 13.

‡ The word "illegal" has been substituted for the word "criminal" by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 10.

§ In ss. 126 and 128, the word "pleader," wherever it occurs, has been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII of 1872), s. 10.

(b) A, a client, says to B, an attorney, "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment:

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

Section 126 to apply to interpreters, &c.

128 If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, pleader,* attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communications with legal advisers.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

Production of title-deeds of witness not a party.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Production of documents which another person, having possession, could refuse to produce.

* In ss. 126 and 128, the word "pleader," wherever it occurs, has been inserted by the Indian Evidence Act (1872) Amendment Act (XVII. of 1872), s. 10.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly, or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. No particular number of witnesses shall, in any case, be required for the proof of any fact.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(c) A is accused of receiving stolen property, knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A), which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D), which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. The examination of a witness by the adverse party shall be called his cross-examination.

Re examination. The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Order of examinations
Direction of re-examination. **138.** Witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon the matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross examined unless and until he is called as a witness.

Cross-examination of person called to produce a document.

Witnesses to character. **140.** Witnesses to character may be cross-examined and re-examined.

Leading questions. **141.** Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When they must not be asked. **142.** Leading questions must not, if objected to by the adverse party, be asked in an examination in chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked. **143.** Leading questions may be asked in cross-examination.

Evidence as to matters in writing. **144.** Any witness may be asked, whilst under examination, wheather any contract, grant, or other disposition of property as to which he is giving evidence, was not contained in a document ; and, if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B :

O deposes that he heard A say to D, "B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant as showing A's motive for the assault and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statement in writing. **145.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved ; but, if it is intended to contradict him by the writing,* his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

* This applies to police-diaries.—See s. 172, Act V. of 1898.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—
(Questions lawful in cross-examination.)

- (1) to test his veracity ,
- (2) to discover who he is, and what is his position in life, or
- (3) to shake his credit by injuring his character, although the answer to such questions might tend, directly or indirectly, to criminate him, or might expose or tend directly or indirectly, to expose him to a penalty or forfeiture

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.
When witness to be compelled to answer

148. If any such question relates to a matter not relevant to the suit or proceeding except in so far as as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following consideration:—
Court to decide when question shall be asked, and when witness compelled to answer

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the the Court as to the credibility of the witness on the matter to which he testifies:

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4) the Court may, if it sees fit, draw, from the witness' refusal to answer, the inference that the answer, if given, would be unfavourable.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.
Question not to be asked without reasonable grounds.

Illustrations.

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait: This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement: This is a reasonable ground for asking the witness whether he is a dakait :

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait: There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney, is subject in the exercise of his profession.

Procedure of Court in case of question being asked without reasonable grounds.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Indecent and scandalous questions.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Questions intended to insult or annoy.

153. When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exclusion of evidence to contradict answers to questions testing veracity.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

- (a.) A claim against an underwriter is resisted on the ground of fraud.
The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.
Evidence is offered to show that he did make such a claim :
The evidence is inadmissible.
- (b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.
Evidence is offered to show that he was dismissed for dishonesty :
The evidence is not admissible.
- (c.) A affirms that on a certain day he saw B at Lahore.
A is asked whether he himself was not on that day at Calcutta. He denies it.
Evidence is offered to show that A was on that day at Calcutta :
The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.
In each of these cases the witness might, if his denial was false be charged with the giving false evidence.
- (d.) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.
He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Question by party to his own witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—

Impeaching credit of witness.

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2) by proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give

* The word "accepted" has been substituted for the word "had" by Act (XVIII. of 1872), s. 11.

reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustration.

(a.) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B;

Evidence is offered to show that, on a previous occasion he said that he had not delivered the goods to B:

The evidence is admissible.

(b.) A is indicated for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A, or in his presence.

The evidence is admissible.

156. When a witness, whom it is intended to corroborate, gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document : Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161.* Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party, if he requires it ; such party may, if he pleases, cross-examine the witness thereupon.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

* As to the application of s. 161 to police-diaries, see the Code of Criminal Procedure (Act V. of 1898), s. 172.

If, for such a purpose, it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Translation of documents.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence, if the party producing it requires him to do so.

Giving, as evidence, of document called for and produced on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party, or the order of the Court.

Using, as evidence, of document, production of which was refused on notice.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped: He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of, relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Judge's power to put questions or order production.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party: nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149: nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any question to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he consider proper.

Power of jury or assessors to put questions.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty fourth year of the reign of His present Majesty (intituled "An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies") as requires the servants of the East India Company, to deliver inventories of their estates and effects: for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far as it relates to Courts of justice in the East Indies.

SCHEDULE.—(*continued.*)ENACTMENTS REPEALED.—(*continued.*)(*See section 2.*)—(*continued.*)

Number and year.	Title.	Extent of repeal.
Stat. 14 & 15 Vict., cap 99.	To amend the Law of Evidence.	Section 11, and so much of section 19 as relates to British India.
Act XV. of 1852.	To amend the Laws of Evidence.	So much as has not been heretofore repealed.
Act XIX. of 1853.	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855.	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861.	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
* * *	* * * * *	* * * 1

1 The entry relating to ss. 7 and 8 of the General Clauses Act (1. of 1868) has been repealed by the General Clauses Act (X. of 1897).

ACT III. OF 1872.*

The Special Marriage Act, 1872.

RECEIVED THE G. G.'S ASSENT ON THE 22ND MARCH 1872.

An Act to provide a form of Marriage in certain cases.

WHEREAS it is expedient to provide a form of marriage for
 Preamble. persons who do not profess the Christian,
 Jewish, Hindu, Muhammadan, Parsi, Bud-
 dhist, Sikh, or Jaina religion, and to legalize certain marriages the
 validity of which is doubtful ; it is hereby enacted as follows :—

Local extent. 1. This Act extends to the whole of
 British India.

Commencement *[Repealed by Act XVI. of 1874.]*

2. Marriages may be celebrated under this Act between per-
 sons neither of whom professes the Christian
 Conditions upon which marriages under Act may be celebrated, or the Jewish, or the Hindu or the Muham-
 medan, or the Parsi or the Buddhist, or
 the Sikh or the Jaina religion, upon the follo-
 wing conditions :—

- (1) neither party must, at the time of the marriage, have a husband or wife living :
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar :
- (3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage :
- (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

* Act III. of 1872 has been declared in force in the Santhal Parganas by Reg. (III. of 1872), s 3, as amended by Reg. (III. of 1899), s 3 ; in Angul and the Khondmals by Reg. (III of 1913) s 3 ; and in British Baluchistan by Reg (II of 1913) s. 3

This title has been given by the Indian Short Titles Act (XIV. of 1897). It has been declared, under the Scheduled Districts Act (XIV. of 1874) to be in force in the following Scheduled Districts :—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan

in the District of Singbhum ... See *Gazette of India*... 1881, Pt. 1., p. 504
 The North-Western Provinces Tarai Ditto ... 1876, Pt. 1., p. 505

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grandfather or great-great-grandmother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III. of 1872,' and is hereinafter referred to as the 'Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.*

One of the parties to intending marriage to give notice to Registrars.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice book under Act III. of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

* For notifications appointing Registrars under s. 3 for districts in—

- (1) Assam, see Assam Rules Manual, Ed. 1893, p. 26.
- (2) Bombay Presidency, see Bombay List of Locals Rules and Orders, Vol. I., Ed. 1896, p. 98.
- (3) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 19.
- (4) North-Western Provinces and Oudh, see Notification at p. 42 of the N. W. Provinces and Oudh List of Local Rules and Orders Ed. 1894.

6. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the mannar hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any civil Court having local jurisdiction (other than a Court of small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given, and the period allowed by law for appeals from such decision has elapsed ; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene

any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bona fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Court may fine when objection not reasonable.

10. Before the marriage is solemnized the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Declaration by parties and witnesses.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, 'I [A.] take thee [B.] to be my lawful wife (or husband).'

Marriage how to be solemnized.

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire : Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

Place where marriage may be solemnized.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III. of 1872, in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses,

Certificate of marriage.

13A.* The Registrar shall send to the Registrar-General of Births, Deaths, and Marriages for the territories within which his district is situate, at such intervals as the "Local Government" from time to time, directs, a true copy certified by him, in such form as the Governor-General in Council, from time to time, prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals.*

Transmission of certified copies of entries in Marriage Certificate Book to the Registrar General of Births, Deaths, and Marriages.

14† The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he thinks fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall, on application, be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15 Every person, who being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

Penalty on married person marrying again under Act.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage,

Punishment of bigamy.

* S. 13A has been inserted by Act VI of 1886, s. 29.

† As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to his office under this section, see Act VI, of 1886, s. 7.

‡ For scale of fees to be paid to Registrars of Marriages prescribed by—

(1) The Government of Bombay, see Bombay List of Local Rules and Orders, Vol. 1, Ed. 1896, p. 98 ;

(2) Chief Commissioner, Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896 p. 19 ;

(3) Government, N. W. P. and Oudh, see Notification at p. 42 of the N. W. P. and Oudh List of Local Rules and Orders, Ed. 1894.

§ The words within quotations have been inserted by Act 38 of 1920.

17. The Indian Divorce Act shall apply to all marriages contracted under this Act and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2 of this Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. *Registry of marriages contracted before passing of Act. [Repealed by Act XII. of 1876]*

21. Every person making, signing, or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.

FIRST SCHEDULE.

(See section 4.)

NOTICE OF MARRIAGE.

To _____, a Registrar of marriages under Act III. of 1872 for the _____ District.

I hereby give you notice that a marriage under Act III. of 1872 is intended to be had, within three calendar months from the date hereof between me and the other party herein named and described (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling-place.	Length of residence.
A B	Unmarried Widower.	Landowner.	Of full age.	...	23 days.
C D	Spinster.	...	Minor.	...	...

Witness my hand, this

day of
(Signed)

18 .

A. B

SECOND SCHEDULE

(See section 10.)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

I, *A B*, hereby declare as follows :—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :
3. I have completed my age of eighteen years :
4. I am not related to *C D* [the bride] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal :

[And when the bridegroom has not completed his age of twenty-one years :

5. The consent of my father (or guardian, as the case may be) has been given to a marriage between myself and *C D*, and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* [the bridegroom].

Declaration to be made by the Bride.

I, *C D*, hereby declare as follows :—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :
3. I have completed my age of fourteen years :
4. I am not related to *A B* [the bridegroom] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal :

[And when the bride has not completed her age of twenty-one years, unless she is a widow :

5. The consent of *M N*, my father (or guardian, as the case may be), has been given to a marriage between myself and *A B*, and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [the bride].Signed in our presence by the above-named *A B* and *C D*.

<i>G H,</i>	} [three witnesses].
<i>I E,</i>	
<i>K L,</i>	

And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :

Signed in my presence and with my consent by the above-named *A B* and *C D* :*M N*, the father [or guardian] of the above-named.*A B* [or *C D*, as the case may be].(Countersigned) *E. F.*Registrar of Marriages under Act III. of 1872.
for the District of

Dated the

day of

18 .

THIRD SCHEDULE.

(See section 13)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that on the _____ of 18____ appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,

*Registrar of Marriages under Act III. of 1872
for the District of _____*

(Signed) *A B.*
C D.

*(I H, }
I F, } three witnesses.
K L, }*

Dated the _____ day of _____ 18____.

FOURTH SCHEDULE.

(See section 20.)

[Repealed by Act XII. of 1876.]

ACT IV. OF 1872.

The Punjab Laws Act.*

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1872.

An Act for declaring which of certain rules, laws, and regulations have the force of law in the Punjab, and for other purposes.

WHEREAS certain rules, laws, and regulations, made heretofore for the Punjab, acquired the force of law under the provisions of section twenty-five of the Indian Councils Act 1861; and whereas it is expedient to declare which of the said rules, laws, and regulations, shall henceforth be in force in the Punjab, and to amend, consolidate, or repeal others of the said rules, orders, and regulations; it is hereby enacted as follows :—

- Short title. **1.** This Act may be called "The Punjab Laws Act, 1872."
- Local extent. **2.** It extends to the territories now under the administration of the Lieutenant-Governor of the Punjab, but not so as to alter the effect of any regulation made for any parts of the said territories under the Statute 33 Vic., cap. 3, section 1 :
- Commencement. And it shall come into force on the first day of June 1872.
- Enactments in force. **3.** The Regulations, Acts, and orders specified in the first schedule hereto annexed, are in force in the Punjab to the extent specified in the third column of the said schedule.
- Enactments repealed. **4.** *Repealed by Act 4 of 1914.*

CIVIL JUDICATURE.

- Decisions in certain cases to be according to native law. **5.†** In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(a) any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not

* This Act has been repealed in N. W. Frontier Provinces by Reg. VII of 1901 s. 5.

† S. 5 has been substituted by Act XII. of 1878 s. 1.

been by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority. ;

(b) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.

Decisions in cases not specially provided for. 6. In cases not otherwise specially provided for, the Judges shall decide according to justice, equity, and good conscience.

Local customs and mercantile usages when valid. 7. All local customs and mercantile usages shall be regarded as valid unless they are contrary to justice, equity, or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority.

DESCENT OF JAGIRS.

Rule of descent in family of assignee of land-revenue. 8. In all cases in which Government has declared any rule of descent to prevail in any family or families of assignees of land-revenue, such rule of descent shall be held to prevail, and to have prevailed, amongst them from the time when the declaration was made.

PRE-EMPTION.

9. [*Right of pre-emption.*] Repealed by Punjab Act 2 of 1905.

10. [*Presumption as to its existence.*] Repealed by Punjab Act 2 of 1905,

11. [*Its existence in towns to be proved.*] Repealed by Punjab Act 2 of 1905.

12. [*Devolution of right when property to be sold or foreclosed is situate within a village.*] Repealed by Punjab Act 2 of 1905.

13. [*Notice to pre-emptors.*] Repealed by Act 2 of 1905.

14. [*Loss of right of pre-emption.*] Repealed by Act 2 of 1905.

15. [*Right of pre-emptor on foreclosure.*] Repealed by Act 2 of 1905.

16. [*Suit to enforce right of pre-emption.*] Repealed by Act 2 of 1905.

† Ss. 22 to 32 repealed by Act 3, of 1907, except in Scheduled District.

16A.* [*Power to require payment into Court.*] Repealed by Act 2 of 1905.

17. [*Decree to fix time for payment.*] Repealed by Act VII of 1895 and Pun. Act 2 of 1905.

18. [*Effect of non-payment of purchase-money.*] Repealed by Act VII of 1895 and Pun. Act 2 of 1905

19 [*Party to sell by joint-owners cannot withdraw his share and claim pre-emption as to rest.*] Repealed by Pun. Act 2 of 1905.

20. [*Preferential right to co-sharers in well where chakdari tenure prevails.*] Repealed by Pun. Act 2 of 1905.

DECREES CONCERNING LAND

21. [*Repealed by Act XVII of 1887 s. 2 and Sch.*]

INSOLVENCY †

Power to invest Courts with insolvency-jurisdiction.

22.† The Local Government may invest any Court or any class of Courts with insolvency-jurisdiction in any specified local area.

23.† Any debtor, whose debts amount to rupees five hundred or upwards, and any creditor or creditors, to whom an aggregate sum of not less than rupees five hundred is due from any such debtor, may petition the Court having local insolvency-jurisdiction that the debtor be adjudicated an insolvent.

Petition to Court for adjudication of insolvency.

24.† If it appear that the debtor's liabilities amount to more than rupees five hundred, the Court may—

- (1) call upon the debtor to make a statement of his assets and liabilities ;
- (2) invite by proclamation or otherwise the appearance of persons to record claims against the debtor ;
- (3) register all claims so recorded ;
- (4) call upon the debtor to give reasonable security for his appearance, or, on default of reasonable security, order his confinement in the civil jail ;

* Section 16 A has been substituted by Act XII. of 1878, s. 2.

† ss 22 to 32 repealed by Act. 3 of 1907, except in the scheduled Districts.

- (5) attach all the debtor's property in the Panjab, moveable or immoveable ;
- (6) pass an order exempting the person and property of the debtor from further legal process, pending inquiry and the final orders of the Court.

Insolvent defined. A debtor on whom the order referred to in clause six of this section is passed, is deemed an insolvent.

25.* The Court shall make full inquiry into the origin, nature, and circumstances of the debts, and the conduct of the debtor in relation thereto ; and if the insolvent be shown to have been guilty of concealment, fraud, recklessness, or other gross misconduct in reference to the debts, and if his discharge, for that reason, is opposed by any of the creditors, the Court may, at its discretion, award a term of imprisonment in the civil jail not exceeding one year.

26.* If it appear that the debtor, after becoming unable to meet his liabilities, or in expectation of becoming so, has transferred his property, or any part thereof, with a view to defrauding his creditors, or to giving one or more creditors, a fraudulent preference over the others, the Court shall annul such transfer, and treat the property transferred as the other property of the debtor.

27.* The property of the insolvent shall be sold or administered, under the direction of the Court, either through the agency of its own officers or of assignees to be appointed by the Court, in the manner most conducive to the interest of the creditors, and the proceeds shall be divided rateably amongst them.

28.* The Court shall give effect to any composition or arrangement agreed upon between the debtor and the majority of the creditors: Provided that no injustice or injury appears to be inflicted by such composition or arrangement on any of the parties concerned, and that no fraud nor collusion is suspected. If any creditor objects to such arrangement, the Court shall decide as to the reasonableness of the the objection.

* Ss. 22 to 32 repealed by Act 3 of 1907, except in the shiuduld Districts,

29.* When the sale or administration of the insolvent's property is complete, the Court may order the insolvent to be discharged, on his signing an agreement to liquidate, from any property which he may subsequently acquire, such portion of his debts as remains unpaid. Such order of discharge shall preclude any creditor whose claim is registered from suing the debtor in respect of such claim, unless it be shown that the debtor has acquired property, since the order of discharge, out of which the claim might have been defrayed.

30.* Nothing in the preceding sections shall apply to persons who may have been admitted to the benefit of any insolvency-law at a presidency-town ; nor shall any order passed under the preceding sections affect the remedy of any creditor against his debtor in respect of property which, at the time of the insolvency of such debtor, was not in the Panjab.

31.* The Chief Court of the Panjab may, with the sanction of the Local Government, from time to time frame and issue rules, conformable to the provisions hereinbefore contained, for the better administration of insolvent estates, and may, with the like sanction, alter any such rules.

32.* The Local Government may at any time, with the previous sanction of the Governor-General in Council, exclude any particular class or race from the operation of these rules.

33.* [*Repealed by Act XII. of 1891, Sch. I.*]

MINORS AND THE COURT OF WARDS.

34.* [*Bar of jurisdiction in certain cases.*] *Repealed by Panjab Act 2 of 1903.*

35.* [*Jurisdiction of Court of Wards.*] *Repealed by Panjab Act 2 of 1903.*

36. [*Deputy Commissioner may inquire into circumstances affecting jurisdiction.*] *Repealed Act 2 of 1903.*

37. [*Appeal to Commissioner against order under section 36.*] *Repealed by Act 2 of 1903.*

38. [*Extent of jurisdiction.*] *Repealed by Act 2 of 1903.*

* Ss. 22 to 32 repealed by Act III. of 1907, except in the scheduled Districts

CRIMINAL JUDICATURE.

39. The provisions of the Indian Penal Code, with the exception of Chapter VI., shall be applicable to all offences committed before first January 1862, in territory which was, at the time of the commission of such offence, subject to the Government of the Punjab :

Indian Penal Code to apply to offences committed previous to first January 1862.

Provided that nothing contained in this section shall affect any privilege conferred on certain Chiefs in the Punjab by the Governor-General in Council, or by the Board of administration for the affairs of the Punjab, nor any indemnity or pardon granted by competent authority,

Saving of privileges conferred on certain Chiefs.

39A.* The Local Government may establish a system of village watchmen or municipal watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters :

Power to establish system of village watchmen, and municipal watchmen, and to make rules

- (a) the definition of the limits of watchmen's beats ;
- (b) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat ;
- (c) the appointment, suspension, dismissal, and resignation of watchmen of each grade ;
- (d) the equipment and discipline of, and the control and supervision over, such watchmen ;
- (e) the conferring upon them, and the exercise by them of any powers, and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police-officer under any law for the time being in force ;
- (f) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the village-communities or municipalities within their respective beats, as the Local Government thinks fit ;
- (g) the exercise of authority over, and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal committees of the towns comprised in their respective beats ;

* Section 39A has been substituted by Act XXIV. of 1881, s. 2, for those originally added by Act XV. of 1875.

- (h) the performance, by the headmen of villages comprised in the beat of any watchman, of any of the duties of a village-watchman in aid of, or substitution for, such watchman ;
- (i) the exercise, by such village-headmen for the purposes referred to in clauses (g) and (h), or by members of Municipal Committees for the purposes referred to in clause (g) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village-watchman or a municipal watchman as the case may be ;
- (j) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village watchmen, of the mode in which their pay, the expenses of their equipment, and other charges connected with the village-watchman system shall be provided for, whether out of cesses or funds already leviable or available in the villages comprised in the beat, or by a special tax in money or kind to be imposed on any class of persons residing or owning property in or restoring to, such villages, or partly in one of these ways and partly in the other ;
- (k) the collection with or without the aid of the village headmen, and by any process available for the realization of the land-revenue, of any tax imposed under clause (j) of this section, and the application of, and the mode of accounting for, the same ; and generally for
- (l) the efficient working of the system of village watchmen or municipal-watchmen:

Provided—

1st.—that the rules to be made regarding the appointment of village-watchmen shall allow to the headmen of the villages comprised in the beat to which such a watchman is to be appointed, a power of nomination to be exercised in such manner, and subject to such reasonable conditions, as may be prescribed by such rules ;

2ndly.—that the rules to be made under clause (f) of this section with regard to village-watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headman of the villages comprised in each beat.

39B.* Every person is bound to render to a village-watchman, or municipal watchman, or village headman discharging the duties of a police-officer under the rules made hereunder, all the assistance which he is bound to render to a police-officer.

Obligation to assist watchmen and headmen.

Any person who obstructs such watchman or headman in the discharge of such duties may be arrested without warrant by a police-officer or by any watchman or village-headman empowered in this behalf by the local Government.

Person obstructing watchman or headman may be arrested without warrant.

39C.† Whenever it seems to the Local Government expedient that the duties of watch and ward and other internal police-service of any town or village not comprised within the limits of a municipality, or within the limits of village-watchman's beat as defined under the power conferred by section thirty-nine A, should be performed by police-officers enrolled under Act V. 1861, the Local Government may direct that the said service shall be so performed, and may also "subject to the control"‡ of the Governor-General in Council, direct that the charges for the time being fixed by such Government on account of such service shall be defrayed by taxes to be levied in such town or village.

Power to direct local taxation for payment of police enrolled under Act V. of 1861.

39D.† When the Local Government has, under section thirty-nine C, directed that taxes shall be levied in any town or village, the Deputy Commissioner may from time to time issue a public notice in such town or village, explaining the nature of the taxes he proposes to levy.

Issue of notice of taxes proposed to be levied.

Any inhabitant of such town or village objecting to the taxation thus proposed may, within fifteen days from the publication of such notice, send his objection in writing to the Deputy Commissioner.

Objections to taxation.

After the expiry of fifteen days from the publication of the notice, the Deputy Commissioner may submit, for the information of the Local Government, a report of the proposal made by him.

Procedure thereon.

* Section 39 B has been substituted by Act XXIV. of 1881 s. 2, for those originally added by Act XV. of 1875.

† Ss 39 C to 39 G have been added by Act XV. of 1875, s. 2.

‡ The words within quotations have been substituted by Act IV. of 1914.

Such report shall contain specific mention of the objections, if any, urged to his proposal, and his opinion on such objections.

No such tax shall be levied until it has, upon such report, been approved by the Local Government.

39E.* When any such tax has been so approved by the Local Government, the Deputy Commissioner may from time to time, subject to such rules consistent with this Act as the Local Government may from time to time prescribe, determine the rates at which it is to be levied.

39F.* The Local Government may, from time to time, make rules to provide for the collection of such taxes by any process available for the realization of the land-revenue, and to regulate the application and mode of accounting for the same.

39G.* [*Indemnity-clause.*] *Repealed by Act XII. of 1891, Sch. I.*

HONORARY POLICE-OFFICERS.

40. The Local Government may, if it thinks fit, confer on any person any of the powers which may be exercised by a police-officer under any Act for the time being in force, "and may withdraw any powers so conferred." †

TRACK LAW.

41. When an offence is, has been, or may reasonably be supposed to have been, committed, and the tracks of the persons who may reasonably be supposed to have committed such offence, or of any animal or other property reasonably supposed to be connected with such offence, are followed to a spot within the immediate vicinity of a village, the person following such tracks may call upon any headman or village-watchman in such village to assist in carrying on the tracks.

42. If such headman or watchman do not forthwith give such assistance, or if the inhabitants of such village do not afford full opportunity for search in their houses for the offenders, or if, from the circumstances of the case, there shall appear good reason to believe that the inhabitants of such village,

* Ss. 39C to 39G have been added by Act XV. of 1875, s. 2.

† In s. 40 the words quoted have been added by Act XII. of 1878 s. 5.

or any of them, were conniving at the offence, or at the escape of the offenders, and such offenders cannot be traced beyond the village, the Magistrate of the district may, with the previous sanction of the Commissioner of the Division, inflict a fine upon such

Limit to fine. village not exceeding five hundred rupees, except in the case of stolen property over five hundred rupees in value, in which case the fine shall not exceed the value of such property.

Appeal to Chief Court,

An appeal against all convictions under this section shall lie to the Chief Court.

The Magistrate may direct that the fine imposed under this section, or any part thereof, shall be awarded to any persons injured by such offence in compensation for such injury ; and, in the case of stolen property recovered through the agency of a tracker, may direct that such property be not restored to its owner until he has paid to such tracker such fee, not exceeding one-fourth part of the value of the stolen property, as to the said Magistrate seems it.

The fine may be awarded to injured parties and fee to tracker.

SLAUGHTER OF KINE.

43.* The slaughter of kine and the sale of beef shall not take place, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Control of slaughter of kine and sale of beef.

ARMED MEN AND FOREIGN VAGRANTS.

44.* No band of armed men shall enter into any city or town, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Control of entry into towns of bands of armed men.

45. The Magistrate of the district may, if he considers that any band of foreign vagrants is likely to occasion a breach of the peace or to commit any offence under the Indian Penal Code, prohibit such band from entering his district ; or, if they are already in his district, may require them within a given time to leave it.

Powers of magistrate of district as to foreign vagrants.

46. If any such band fail to comply with the orders of the said Magistrate within the prescribed period he shall report the matter to the Local Government, and the Local Government may give such directions for the surveillance, control, or deportation of such band, as to it seems fit.

Surveillance, &c., of band failing to comply with Magistrate's order.

* In ss. 43, 44, and 47 the words "with the consent and" being repealed by Act XL of 1898, s. 6, have been omitted.

MISCELLANEOUS.

47.* No person shall cross any river or stream on a buoy or inflated skin, nor shall have in his possession or custody any buoy or skin for the purpose of being used in crossing any river or stream, except subject to rules to be from-time to time, either generally or in any particular instance, prescribed by the Local Government.

Crossing of streams on buoys or skins.

48. No person shall make use of the pasturage or other natural product of any land being the property of the Government, except with the consent and subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Use of pasturage or natural product of Government land.

[**49** *Growing, selling, or keeping opium*]. *Repealed by Act I, of 1878, s. 2, and Sch.*

Power to make rules as to matters mentioned in sections 43 to 49.

50.† The Local Government may from time to time make rules as to the matters mentioned in sections 43 to 49 inclusive.

All existing rules upon such matters, which might have been made under this section had it been in force, shall be deemed to have been made hereunder.

Existing rules.

Conditions as to validity of rules hereafter made under this Act.

50.A.† No rules hereafter made by the Local Government under any power conferred by this Act shall be "subject to the Control of the Governor-General in council and no such rules shall be valid"§ unless—

(a) they are consistent with the laws for the time being in force in the Panjab ;

(b) they are published in the official Gazette ;

50B.† The Local Government may, in making any rule under any of the powers conferred by this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment on conviction before a Magistrate not exceeding six month's imprisonment, or three hundred rupees fine, or both.

Penalties for breach of such rules.

* In ss. 43, 44 and 47 the words "with the consent and," being repealed by Act XII of 1878 s. 6 have been omitted.

† Ss. 50 and 50A and 50B, have been substituted for s. 50 by Act XV. of 1875 s. 3.

‡ In s. 50 read s. 48.

§ Certain words after this, which have been repealed by Pun. Act I of 1910, have been omitted.

51. All rules which the Local Government is empowered to issue under this Act, and all circulars issued by the Chief Court, shall be re-published from time to time by the Local Government* and upon such re-publication shall be arranged in the order of their subject-matter; and all such alterations or amendments as may have been made since the last preceding publication thereof, or may have become necessary or advisable, shall be embodied therewith; and upon such republication all such rules and circulars previously issued shall be repealed †

SCHEDULE I ‡

ENACTMENTS DECLARED TO BE IN FORCE.

Explanation.—This Schedule does not refer to any Act which is in its terms applicable to the Panjab, or which has been extended to the Panjab by competent authority.

Number and year.		Extent to which the enactment is in force
Reg. I. of 1798 § ...	A Regulation to prevent Fraud and Injustice in Conditional Sales of Land under Deeds of Bai-bil-wafa, or other Deeds of the same nature.	The whole, except such parts as relate to interest.
Reg. X. of 1804 ...	A Regulation for declaring the powers of the Governor-General in Council to provide for the immediate punishment of certain Offences against the State by the sentence of Courts-martial	The whole, so far as it is not modified by Act V. of 1841.
Reg. XXVI. of 1806. § ...	A Regulation for extending to the province of Benares the Rates of Interest on future Loans, and Provisions relative thereto, contained in Regulation XV., 1793; also for a general extension of the period	Sections seven and eight.

* Certain words after this, which have been repealed by Pun. Act I, of 1910, have been omitted.

† Section 51 has been substituted for the original one by Act VII. of 1895

‡ So much of Act IV. of 1872 as relates to Regs. V. of 1817 and XX. of 1825 was repealed by Act VI. of 1878, s. 2, and Sch., and X. of 1882, s. 2, and Sch. I. (b), respectively. The references to these Regulations in this Schedule have therefore been omitted.

§ So much of Act IV. of 1872 as relates to Regs. I of 1798 and XVII. of 1806 will be repealed when Act IV. of 1882 is extended to the Panjab.—See ss. 1 and 2, and Sch. (b), *ib.*

SCHEDULE I.—(*continued*).ENACTMENTS DECLARED TO BE IN FORCE—(*continued*).

Number and year.	Title.	Extent to which the enactment is in force
	fixed by Regulations I., 1798, and XXXIV., 1803, for the redemption of Mortgages and Conditional Sales of Land, under Deeds of Bai-bil-wafa, Katkabala, or other similar designation	
Reg. III. of 1818.	A Regulation for the Confinement of State Prisoners.	The whole.
Reg. XI. of 1825.	A Regulation for declaring the Rules to be observed in determining Claims to Lands gained by alluvion or by dereliction of a river or the sea.	The whole.
Act XL. 1858* ...	An Act for making better provision for care of the persons and property of minors in the Presidency of Fort William in Bengal:	The whole.
Act. XVII. of 1861†	An Act to amend Act XIV. of 1843 (for regulating the customs Duties in the North-Western Provinces).	The whole, the word "Panjab" being substituted for the words "North-Western Provinces.,
	"Rules for the conservancy of Forests and Jungles in the Hill Districts of the Panjab Territories, sanctioned by the Governor-General in Council, in letter of the Secretary to the Government of India, No. 1789, 21st May 1855."	The whole.

SCHEDULE II.—*Repealed by Act XVII of 1914.*

* Act IV of 1872. has been repealed so far as it relates to Act XL. of 1858.—See Act VIII. of 1890, s. 2, and Sch.

† Act XVII. of 1861 was repealed by Act VIII. of 1875, s. 2, and Sch. the First Schedule of Act IV. of 1872, so far as it relates to Act XVII. of 1861, has been repealed by Act XII. of 1861, Sch. 1.

ACT V. OF 1872.

RECEIVED THE G.-G'S ASSENT ON THE 28TH MARCH 1872.

An Act to remove doubts as to the jurisdiction of the High Court of Bombay over the Province of Sindh.

WHEREAS it is expedient to remove doubts which have arisen as to the jurisdiction of the High Court of Bombay over the Province of Sindh ; It is hereby enacted as follows:—

Bar of jurisdiction in
Sindh of Bombay High
Court

1. The High Court of Bombay has not, and shall be deemed never to have had, jurisdiction over the Province of Sindh.

Saving of Act XXIV. of
1867.

2.* Nothing herein contained shall be deemed to affect the Administrator General's Act 1874.†

Saving of probates and
administrations.

3.* Nothing herein contained shall be deemed to invalidate the grant of any probate or letters of Administration heretofore or hereafter made by the High Court of Judicature at Bombay or to affect the rights, powers, or duties of any executor or administrator under, or by virtue of, any such probate or letters.

Saving of High Court's
criminal jurisdiction.

4.* Nothing herein contained shall be deemed to affect the criminal jurisdiction of the said High Court so far as regards European British subjects of Her Majesty.

* Secs. 2, 3, and 4, were added to this Act by Act. XX. of 1872.

† In s. 2 the figures "1874" have been substituted for the figures "1867" by Act XII. of 1891, Sch. II. But now read Act III of 1913.

ACT IX. OF 1872.*

The Indian Contract Act.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH APRIL 1872.

Preamble. WHEREAS it is expedient to define and amend certain parts of the law relating to contracts ; It is hereby enacted as follows :—

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Contract Act, 1872,"

Extent. It extends to the whole of British India ; †
Commencement. and it shall come into force on the first day of September 1872.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof ; but nothing herein contained shall affect the provisions of any Statute, Act, or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

* For the statement of Objects and Reasons for the Bill, which was based on a Report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated July 6, 1866, see *Gazette of India*, 1867, Extraordinary, p. 34. For the Report of the Select Committee, see *Ibid.*, 1871, p. 313, and *Ibid.*, 1872, p. 527.

The chapters and sections of the Transfer of Property Act (IV. of 1882) which relate to contracts are, in places in which that Act is in force, to be taken as part of Act IX. of 1872—See IV. of 1882, s. 4.

† Act IX. of 1872 has been declared in force, in—

- (1) the Santhal Parganas [see the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Laws Regulation (III. of 1899), s. 3] ;
- (2) the Arakan Hill District [see the Arakan Hill District Laws Regulation (I of 1916), s. 2
- (3.) Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4 ;
- (4) British Baluchistan [see the British Baluchistan Laws Regulation (II of 1913), s. 3.]

Act IX. of 1872 has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in—

- (1) the North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I., p. 505) ;
- (2) the Districts of Hazaribagh, Lohardaga, and Manbhum. and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894

Act IX. of 1872 has been extended by notification under s. 5 of the Scheduled Districts Act (XIV. of 1874), to the whole of Upper Burma, except the Shan States (see *Gazette of India*, 1893, Pt. II., p. 272).

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

(a).—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

“Proposal.”

(b).—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,* becomes a promise :

“Promise.”

(c).—The person making the proposal is called the ‘promisor,’ and the person accepting the proposal is called the promisee :

“Promisor” and “promisee”

(d).—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise :

“Consideration.”

(e). Every promise and every set of promises, forming the consideration for each other, is an agreement :

“Agreement.”

(f).—Promises which form the consideration or part of the consideration for each other, are called reciprocal promises :

“Reciprocal promises.”

“Void agreement.”

(g).—An agreement not enforceable by law is said to be void.

“Contract.”

(h).—An agreement enforceable by law is a contract :

(i).—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :

“Voidable contract.”

“Void contract.”

(j).—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION
OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it.

Communication, acceptance, and revocation of proposals.
4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,
as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;
as against the acceptor, when it comes to the knowledge of proposer.

The communication of a revocation is complete,
as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it,
as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(a.) A proposes, by letter, to sell a house to B at a certain price,
The communication of the proposal is complete when B receives the letter,

(b.) B accepts A's proposal by a letter sent by post.
The communication of the acceptance is complete,
as against A when the letter is posted;
as against B when the letter is received by A.

(c.) A revokes his proposal by telegram.
The revocation is complete as against A when the telegram is despatched.
It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete against the proposer but not afterwards.

Revocation of proposals and acceptances.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time without communication of the acceptance ;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must.

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Acceptance by performing conditions or receiving consideration.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts* if they are made by free consent of parties competent to contract, for a lawful consideration, † and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed by which any contract is required to be made in writing ‡ or in the presence of witnesses, or any law relating to the registration of documents.§

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, ¶ and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests.

* See s. 2 cl. (h), *supra*.

† See s. 25 expl 2, and s. 102, *infra*.

‡ See, for example, the following:—

- (1) s. 25, *infra* ;
- (2) the Indian Copyright Act (III. of 1914), Sch. s. 5 ,
- (3) the Conveyance of Land Act (XXXI. of 1854), ss. 14, 18 ;
- (4) the Merchant Shipping Act (57 & 58 Vict. c. 60), 24 ,
- (5) The Imperial Bank of India Act (47 of 1920) s. 21.
- (6) the Transfer of property Act (IV. of 1882), ss. 54, 59, 107, 123,
- (7) the Indian Companies Act (VII. of 1913).
- (8) the Apprentices Act (XIX. of 1850), s. 8.

Cf. also s. 4 of the Workman's Breach of Contract Act (XIII. of 1859) and the Carries Act (III. of 1865), ss. 6, 7.

§ See now the Indian Registration Act (XVI. of 1908).

¶ See the Indian Majority Act (IX. of 1875). For exception to this rule in the case of emigrants see the Assam Labour and Emigration Act (VI. of 1901).

¶ But see s. 68, *infra*,

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk, that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

“Consent” defined.

14. Consent is said to be free when it is not caused by —

“Free consent” defined.

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21, & 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

“Coercion” defined.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where, the act was done.

16. (1)* A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(2) In particular, and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provision of section 111 of the Indian Evidence Act, 1872.

Illustrations.

(a.) A, having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b.) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c.) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d.) A applies to a banker for a loan at a time when there is stringency in the money-market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,† with intent to deceive another party thereto, or his agent, or to induce him to enter into the contract:—

* S. 16 has been substituted for the original by the Indian Contract Act Amendment Act (VL of 1899), s. 2.

† Compare s. 238 *infra*.

- (1) —The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;
- (2) —The active concealment of a fact by one having knowledge or belief of the fact,
- (3) —A promise made without any intention of performing it ;
- (4) —any other act fitted to deceive ,
- (5) —Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of a person keeping silence to speak,* or unless his silence is, in itself, equivalent to speech.

Illustrations.

- (a.) A sells by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.
- (b.) B is A's daughter, and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.
- (c.) B says to A, "If you donot deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.
- (d.) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true though he believes it to be true ;
- (2) any breach of duty which, without an intent to deceive, gains and advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him ;
- (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion,[†] fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Voidability of agreements without free consent.

* See s. 143, *infra*.

† In s. 19 the words "undue influence" have been omitted being repealed by the Indian Contract Act, Amendment Act (VI. of 1899), s. 3.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out, and the mortgage-debt redeemed.

(d.) B, having discovered a vein of ore, on the estate of A, adopts means to conceal and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies; C having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

19A.† When consent to an agreement is caused by undue

Power to set aside contract induced by undue influence.

influence, the agreement is a contract voidable at the option of the party whose consent was so caused,

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

† S. 19A has been added by the Indian Contract Act Amendment Act (VI, of 1899) s. 3.

Illustrations.

(a.) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b.) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 12 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Effect of mistake as to law.

Illustration.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable †

Contract caused by mistake of one party as to matter of fact.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

* See s.s. 26, 27, 28, 30, *infra*.

† The second illustration to section 21 has been repealed by Act 24 of 1917.

What considerations and objects are lawful, and what not.

23. The consideration or object of an agreement is lawful, unless--

- it is forbidden by law;* or
- is of such a nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or the Court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.

Illustrations.

(a.) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful consideration.

(c.) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise; and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B, and C, enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j.) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

Void Agreements.

Agreements void if consideration and object unlawful in part.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A Promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration void, unless—

25. An agreement made without consideration is void unless—

(1) it is expressed in writing, and registered under the law for the time being in force for the registration of documents,* and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do ; or unless

(3) it is a promise, made in writing, and signed by the person or is a promise to pay a debt barred by limitation law, to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.*

In any of these cases such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

* In s. 25 the word "documents" has been substituted for the word "assurances" by the Repealing and Amending Act (XII. of 1891). For the law relating to the registration of documents, the Indian Registration Act (XVI. of 1908).

* See now the Indian Limitation Act (IX. of 1908).

Illustrations.

(a.) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b.) A, for natural love and affection, promises to give his son, B Rs. 1,000. A puts his promise to B into writing, and registers it. This is a contract.

(c.) A finds B's purse, and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay Rs. 500 on account of the debt. This is a contract.

(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor,* is void.

27. Every agreement by which any one is restrained for exercising † a lawful profession, trade or business, of any kind, is to that extent void.

Agreement in restraint of trade void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

* During his or her minority, as to which see act IX. of 1875.

† The words "restrained from exercising," do not mean an absolute restriction, and are intended to apply to a partial restriction limited to some particular place—*Per Couch, C. J.* 14 B. L. R. 85.

Exception 3.—Partners may agree that some one or all of them will not carry on any business other than that of the partnership during the continuance of the partnership.

or during continuance of partnership.

28. Every agreement, by which any party thereto, is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Agreements in restraint of legal proceedings void.

Exception 1.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Saving of contract to refer to arbitration dispute that may arise.

*When such a contract has been made, a suit may be brought for its specific performance; and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.**

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Saving of contract to refer questions that have already arisen.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Agreements void for uncertainty.

Illustrations.

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

(c.) A, who is a dealer of cocoanut-oil only, agrees to sell to B one hundred tons of oil. The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

* In s. 28, the italicized clause of exception (1) has been repealed by the Specific Relief Act (I of 1877) throughout British India, except in the scheduled districts in which that Act is not in force.

(d) A agrees to sell to B 'all the grain in my granary at Ramnagar'. There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B, one thousand maunds of rice at a price to be fixed by C.' As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f.) A agrees to sell to B, my white horse for rupees five hundred or rupees one thousand'. There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void, and no suit shall be

Agreement by way of brought for recovering anything alleged to be won and any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing
This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.*

Section 294A of the Indian Penal Code not affected.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

CHAPTER III.

OF CONTINGENT CONTRACTS.

31. A 'contingent contract' is a contract to do or not to do something, if some event collateral to such contract does or does not happen.

Illustration.

A contracts to pay B, Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.
32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(a.) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until B dies in A's lifetime.

* Cf. the Gaming Act 1845 (8 and 9 Vict., c. 109), 18.

(b.) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything, if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible and not before.

Enforcement of contract contingent on an event not happening.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

34 If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void, if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts become void which are contingent on happening of specified event within fixed time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreements contingent
on impossible events void.

Illustrations,

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Obligation of parties to
contracts.

Promises bind the representatives of the promisors in case of death of the promisors before performance unless a contrary intention appears from the contract.

Illustrations.

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Effect of refusal to accept
offer of performance.

Every such offer must fulfil the following conditions :—

(1.) It must be unconditional.

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract,* unless he has signified, by words or conduct, his acquiescence in its continuance.

Effect of refusal of party to perform promise wholly

Illustrations.

(a.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom contracts must be performed.

40 If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Person by whom promise is to be performed.

Illustrations.

(a.) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

* And see s. 75, *infra*.

(b.) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Effect of accepting performance from third person

42. When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract) all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one "or more"* of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

Explanation.—Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a.) A, B, and C jointly promise to pay D, 3,000 rupees. D, may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B, and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

* In s. 43, the words "or more" have been inserted by the Repealing and Amending Act (XII. of 1891).

(c.) A, B, and C are under a joint promise to pay D, 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B, and C are under a joint promise to pay D, 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.*

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.†

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place for Performance.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation—The question, "What is a reasonable time?" is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day, and at the place at which the promise ought to be performed.

* See s. 138, *Infra*.

† For an exception to s. 45 in the case of Government Securities, see the Indian Securities Act (XIII. of 1886), s. 5.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

- 48.** When a promise is to be performed on a certain day, and the promisor has not undertaken to perform

Application for performance on certain day to be at proper time and place.

it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the

usual hours of business.

Explanation—The question, "What is a proper time and place?" is, in each particular case, a question of fact.

- 49.** When a promise is to be performed without application

Place for performance of promise where no application to be made, and no place fixed.

by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of

the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

- 50.** The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

Illustrations.

(a.) B owes A, 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B, 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part-payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises,

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

- 51.** When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods unless A is ready and willing to deliver them on payment.

(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52 Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order ; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Order of performance of reciprocal promises.

Illustrations.

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented ; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the nonperformance of the contract.

Liability of party preventing event on which contract is to take effect.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B ; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such, that one of them cannot be performed, or that its performance cannot be claimed, till the other has been performed, and the promisor of the promise last-mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(a.) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performances of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c.) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain

Effect of failure to perform at fixed time in contract in which time is essential.

things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be

Effect of such failure when time is not essential.

of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time : but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time

Effect of acceptance of performance at time other than that agreed upon

agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.*

* Compare ss. 62 and 63, *M.P.A.*

Agreement to do impossible act

56. An agreement to do an act impossible in itself is void.

A contracts to do an act which, after the contract is made becomes impossible,† or, by reason of some

Contract to do act afterwards becoming impossible or unlawful,

event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.‡

Where one person has promised to do something which he knew, or, with reasonable diligence, might

Compensation for loss through non-performance of act known to be impossible or unlawful,

have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee

sustains through the non-performance of the promise.

Illustrations.

(a.) A agrees with B to discover treasure by magic. The agreement is void.

(b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The Contract becomes void.

(c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise

(d.) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly, to do certain

Reciprocal promises to do things legal, and also other things illegal.

things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract ; but the second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house, and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

† Otherwise than by the default of the contractor

‡ But see s. 65, *infra*. And see the Specific Relief Act (I of 1877), s. 13.

58. In the case of an alternative promise, one branch of which is legal, and the other illegal, the legal branch alone can be enforced.

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

Illustrations.

(a) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B, no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where debt to be discharged is not indicated.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts* in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

Application of payment where neither party appropriates.

Contracts which need not be performed.

Effect of novation, rescission, and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

* Probably the lawful debts referred to in s. 60.

Illustrations.

(a.) A owes money to B under a contract. It is agreed, between A, B, and C, that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. A owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,* or may accept, instead of it, any satisfaction which he thinks fit.

Illustrations.

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B, 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B, 1,000 rupees, and B accepts them, in satisfaction of his claim on A. The payment is a discharge of the whole claim.†

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B, 2 000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition‡ of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.§

Consequences rescission
of voidable contract.

* But see s. 135, *infra*.

† See s. 41, *supra*.

‡ The word "composition" has been substituted for the word "compensation" by the Repealing and Amending Act (XII of 1891).

§ See s. 75, *infra*.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has

Obligation of person who has received advantage under void agreement or contract that becomes void.

son from whom he received it.

received any advantage under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he received it.

Illustrations.

(a.) A pays B, 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. Rescission of a voidable contract may be communicated or revoked in the same manner, and subject

Mode of communicating or revoking rescission of voidable contract

to the same rules as apply to the communication or revocation of a proposal.*

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

* See ss. 3, and 5, *supra*.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessities supplied to person incapable of contracting or on his account,

Illustrations.

(a.) A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

Re-imbursement of person paying money due by another, payment of which he is interested.

69 A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.*

Obligation of person enjoying benefit of non-gratuitous act.

Illustrations.

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

* As to suits by minors under s. 70 in Presidency Small Cause Courts, see the Presidency Small Cause Courts Act (XV. of 1882), s. 32.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.*

Responsibility of finder of goods.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

72. A person to whom money has been paid, or anything delivered, by mistake or under coercion,† must repay or return it.

Illustrations.

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Compensation for loss or damage caused by breach of contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred, and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it, and had broken his contract.

Compensation for failure to discharge obligation resembling those created by contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

* See ss. 151 and 152, *infra*. As to definition of "bailee," see s. 148, *infra*.

† For definition of coercion, see s. 15, *supra*.

Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract-price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board on the first of January, a cargo which A is to provide, and to bring it to Calcutta the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A by way of compensation, the amount, if any, by which the contract-price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract-price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur for sale at the place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market-price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the costs of making the repairs conform to the contract.

(g.) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and on the first of January the hire obtainable for the ship is higher than the contract-price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract-price and the price for which B could hire a similar ship for a year on and from the first of January.

(h.) A contracts to supply B with a certain quantity of shot at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract-price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A, 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k.) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract-price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l.) A, a builder contracts to erect and finish a house by the first of January in order that B may give possession of it at that time to C to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down, and has to be rebuilt by B, who in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m.) A sells certain merchandise to B, warranting it to be of a particular quality, and B in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of salpêtre to B on the first of January at a certain price. B afterwards, before the first of January, contracts to sell salpêtre to C at a price higher than the market-price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market-price of the first of January, and not the profit which would have arisen to B from the sale to C is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise and B having no cotton is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q.) A contracts to sell and deliver to B on the first of January, certain cloth which B intends to manufacture into caps of a particular kind for which there is no demand except at that season. The cloth is not delivered till after the appointed time and too late to be used that year in making caps. B is entitled to receive from A by way of compensation, the difference between the contract price of the cloth and its market-price at the time of delivery, but not the profits which he expected to obtain by making caps nor the expenses which he has been put to making preparation for the manufacture.

(r.) A, a ship-owner contracts with B to convey him from Calcutta to Sydney in A's ship sailing on the first of January, and B pays to A by way of deposit, one-half of his passage-money. The ship does sail on the 1st of January, and B after being in consequence detained in Calcutta for sometime, and

thereby put to some expense, proceeds to Sydney in another vessel and in consequence arriving too late in Sydney, loses a sum of money. A is liable to repay B his deposit with interest, and the expense to which he is put by his detention in Calcutta and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

74.* When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, *or if the contract contains any other stipulation by way of penalty*, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, *or, as the case may be the penalty stipulated for.*

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail bond, recognizance, or other instrument of the same nature, or, under the provisions of any law or under the order, of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

Illustrations.

(a.) A contracts with B to pay B, Rs. 1,000 if he fails to pay B, Rs. 500 on a given day. A fails to pay B, Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B, Rs. 5,000. A practises as a surgeon in Calcutta. A is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d.) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default,

* Paragraph 1 and the explanation following it have been substituted for the paragraph originally enacted. The difference between the old and the new paragraph is shown by the italicised words which are newly inserted in the repeated paragraph. The explanation which follows paragraph 1 is entirely new. See the Indian Contract Act Amendment Act (VI. of 1899), s. 4 (13).

interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.*

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.*

(f). A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.*

(g) A borrows Rs. 100 from B, and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.*

Party rightfully rescinding contract entitled to compensation,

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract,

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B, in consequence rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.

SALE OF GOODS.

When Property in Goods sold passes.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.

'Goods' defined.

77. 'Sale' in the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

'Sale' defined.

78. Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods,

Sale how effected.

* Illustrations (d), (e), (f), and (g), have been added by the Indian Contract Act Amendment Act (VI. of 1899), s. 4 (2).

together with payment of the price or delivery of the goods ; or with tender, part-payment, earnest, or part-delivery ; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.*

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the 1st January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished,† the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Completion of sale of goods, which the seller is to put into state in which buyer is to take them.

80. Where, by a contract for the sale of goods, the seller is to do any thing to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

*That is, when the whole is delivered, or when part is delivered in progress of delivery of the whole—See s. 92. *infra*.

† See s. 80 *infra*.

Illustration.

A, a ship-builder, contracts to sell to B for a stated price a vessel which is lying in A's yard the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(a.) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's grounds to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.*

Completion of sale when goods are unascertained at date of contract.

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Ascertainment of goods by subsequent appropriation.

Illustration.

A, having a quantity of sugar in bulk more than sufficient to fill 20 hogsheads, contracts to sell to B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B the sugar becomes the property of B.

* See s. 79, *supra*.

84. Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and, by his doing so, the goods are ascertained.

Ascertainment of goods by seller's selection.

Illustration.

B agrees with A to purchase of him at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of ownership of moveable property, when sold together with immoveable.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration,

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations,

(a.) B offers and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract by the seller, or by the buyer with the seller's assent,

Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under his contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

- 88.** A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Contract to sell and deliver at a future day goods not in seller's possession at date of contract.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

- 89.** Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Determination of price not fixed by contract.

Illustration.

B, living in Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

Delivery.

- 90.** Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Delivery how made.

Illustrations.

(a.) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery,

(b.) B in England orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A, B sells the five casks to C. A receives warehouse-rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a warfing, at whose warf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer-notice to B, and offers to give it to him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a warfing or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him unless the delivery is so made as to enable him to hold the warfing or carrier responsible for the safe custody or delivery of the goods.

Effect of delivery to warfing or carrier.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder,

Effect of part-delivery.

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This has not the legal effect of a delivery of the whole,

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery.

93. In the absence, of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.*

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale ; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Place of delivery.

Seller's Lien.

95. Unless a contrary intention appears by the contract, a seller has a lien† on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.‡

Seller's lien.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But, if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Lien where payment to be made at a future day, but no time fixed for delivery.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

*Insolvency defined.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given: B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

* See s. 46, *supra*.

† For the amount of the purchase-money.

‡ Or untendered.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three month's credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

A seller's lien against subsequent buyer.

Stoppage in Transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power of seller to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

When goods are to be deemed in transit.

Illustrations.

(a.) B, living at Madras, orders goods of A at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier, appointed by B. The goods arrive at Puna, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Continuance of right of stoppage.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title of the goods,* assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Cessation of right on assignment, by buyer, of bill of lading.

Illustrations.

(a.) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B, A being still unpaid. B becomes insolvent, and while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge to secure an advance made specifically upon it in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Stoppage where bill of lading is pledged to secure specific advance.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. C becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure the sum of 5,000 rupees due from him to C upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.

Stoppage how effected

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Notice of seller's claim.

* See s. 108, except 1, *infra*.

Right of seller on stop-
page.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton, 60 bales having come into B's possession, and 40 being still in transit; B becomes insolvent, and A, being still unpaid stops the 10 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Re-sale.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, re-sell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such re-sale,

Re sale on buyer's failure
to perform

Title.

Title conveyed by seller
of goods to buyer
cases :—

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary :* Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

* It has been held that this exception does not apply 'where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose—*Greenwood v. Holquette* 12 B. L. R. 46.

Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party there to, the ownership of the goods is transferred to a third person, who, before the contract is rescinded, buys them in good faith of the person in possession ; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B, and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C ; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale of goods by sample.

112. On the sale of good by sample, there is an implied warranty that the bulk is equal in quality to the sample.*

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample or after inspection of the bulk.

Warranty implied where goods are sold as being of a certain denomination.

Explanations.—But, if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations

(a.) A, at Calcutta, sells to B twelve bags of "waste silk" then on its way from Murshidabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk"

(b.) A buys, by sample, and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal." There is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.*

Warranty where goods ordered for a specified purpose.

Illustration.

B orders of A, a copper-manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of article of well-known ascertained kind.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cottoncleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

* See s. 118, *infra*.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Seller when not responsible for latent defects.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Buyer's right on breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may accept the goods or refuse to accept the goods when tendered.

Right of buyer on breach of warranty in respect of goods not ascertained.

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them: Provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty: but if he accepts the goods, and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a.) A agrees to sell, and, without application on B's part, deliver to B, 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two-sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

119 When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

Effect of wrongful refusal to accept.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract, on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Right of sellers as to rescission, on failure of buyer to pay price at time fixed.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of lots sold by auction.

Effect of use, by seller, of pretended biddings to raise price.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

'Contract of indemnity' defined.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within Rights of indemnity- the scope of his authority, is entitled to re- holder when sued. cover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies ;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit ;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety" the person in respect of whose default the guarantee is given is called "the principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transaction is called a "continuing guarantee."

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees payment to B a tea-dealer, to the amount of £100, for any tea he may, from time to time, supply to C. B supplies C with tea to above the value of £100 and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees payment to B of the price of five sacks of flour, to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Revocation of continuing guarantee by surety's death.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence,

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

Illustration,

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact, that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal, "debtor,"* and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by
variance in terms of contract

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him, and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards, B becomes embarrassed, and, without the knowledge of A, B and C, contract that C shall continue to supply B with oil for ready money, and that the payment shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B, 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.†

Discharge of surety by
release or discharge of prin-
cipal debtor

* The word within quotations have been inserted by Act 24 of 1917.

† See ss. 29, 53, 54, 55, 62, 63, 67, 118, 120, *supra*.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed, and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land, and to deliver it to B at a fixed rate and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

Surety not discharged when agreement made with third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.*

Release of one co-surety does not discharge others,

* See s. 44, *supra*.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.*

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A, as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed

Rights of surety on payment or performance.

duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.†

141. A surety is entitled to the benefit of every security

Surety's right to benefit of creditor's securities.

which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security the surety is discharged to the extent of the value of the security.‡

Illustrations.

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. B cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

* See s. 133, *supra*.

† For example, the right to stop in transit.

‡ See s. 139, *Supra*.

(c.) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. After-wards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with a knowledge and assent, concerning a material part of the transaction, is invalid

Guarantee obtained by misrepresentation invalid

143. Any guarantee which the creditor obtained by means of keeping silence as to a material circumstance is invalid.

Guarantee obtained by concealment invalid.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts and A, in consequence, calls upon him to furnish security for his duly accounting: gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons B and C have privately agreed that B should pay five rupees per ton beyond the market-price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not void if that other person does not join.*

Guarantee on contract that creditor shall not act on it until co-surety joins.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety.

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A, to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

* See s. 33, *Supra*.

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.*

Co-sureties liable to contribute equally.

Illustrations.

(a.) A, B, and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B, and C are liable, as between themselves, to pay 1,000 rupees each.

(b.) A, B, and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.*

Illustrations.

(a.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B, and C, are each liable to pay 10,000 rupees.

(b.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B, and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B, and C, have to pay each the full penalty of his bond.

* See s. 43. *supra*,

CHAPTER IX.

OF BAILMENT.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

*Explanation :—*If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware and which, materially interfere with the use of them, or expose the bailee to extra-ordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damages sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.*

* As to railway contracts, see the Indian Railway Act, (IX. of 1890), s. 72. Of. also, as to liability of common carriers, see s. 8 of the Carriers Act (III. of 1895).

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Bailee when not liable for loss, &c., of things bailed.

Termination of bailment by bailee's act inconsistent with conditions.

153. A contract of bailment is voidable at the option of the bailor if the bailee does any act with regard to the goods bailed, inconsistent with the condition of the bailment.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls, and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls, and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent of his goods with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales and any other individual damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor, with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture, with out bailor's consent when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour, worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B. must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.*

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return or deliver, according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.†

161. If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.‡

Bailee's responsibility when goods are not duly returned.

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee

* See Story, *Bailments* §. 258,

† But see ss. 24, 152, *supra*, and 170, *infra*, to the provisions of which this section must be subject.

‡ As to railway contracts, see the Indian Railways Act (IX. of 1890), s. 72.

163. In the absence of any contract to the contrary, the bailor entitled to increase or profit from goods bailed, according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailor's responsibility to bailee.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailment by several joint owners.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.*

Bailee not responsible on re-delivery to bailor without title.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.†

Right of finder of goods;

may sue for specific reward offered.

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it.

* See the Indian Evidence Act (I. of 1872), s. 117.

† See Story, *Bailments*, § 121a.

(1) when the thing is in danger of perishing or of losing the greater part of its value ; or,

(2) when the lawful charges of the finder in respect of the thing found amount two-thirds of its value. *

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered,

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court, and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods† bailed to them ;‡ but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.§

General lien of bankers, factors, wharfingers, attorneys, and policy-brokers

Bailments of Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

"Pledge," "pawnor," and "pawnee" defined.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee's right of retention.

* *New York Civil Code*, § 943.

† Whether belonging to the bailor or not.

‡ As such.

§ As to the lien of agent, s. 221, *infra*. As to the lien of Railway Administration, see the Indian Railways Act (IX. of 1890) s. 55.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee not to retain for debt or promise other than that for which goods pledged.

Presumption in case of subsequent advances.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

Pawnee's rights where pawnor makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

178. A person who is in possession of any goods or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents; Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly.

Pledge by possessor of goods or of documentary title to goods.

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.*

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Suit by bailor or bailee against wrong-doer.

Apportionment of relief or compensation obtained by such suit.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

182. An 'agent' is a person employed to do any act for another,† or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal.'

'Agent' and 'principal' defined.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.‡

Who may employ agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Who may be an agent.

* Cf. the Factors Act (5 & 6 Vict., c. 39), ss. 1 and 3.

† Cf. s. 225, *infra*. As to the effect of an agent's fraud, see s. 17, *supra*; and s. 238, *infra*.

‡ Cf. s. 11, *supra*.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.*

187. An authority is said to be express when it is given by Definition of express and words spoken or written. An authority is implied authority. said to be implied when it is to be inferred from the circumstances of the case ; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

Extent of agent's authority.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has authority, in an emergency, to do all such Agent's authority in an emergency. acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case, under similar circumstances.†

Illustrations.

(a.) An agent for sale may have goods repaired if it be necessary.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

* But see the Indian Registration Act (XVI. of 1908), and the Code of Civil Procedure (Act V. of 1908).

† But see s. 214, *infra*.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed.

When agent cannot delegate.

"Sub-agent" defined.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by, and responsible for, his acts, as if he were an agent originally appointed by the principal.

Representation of principal by sub-agent properly appointed.

Agent's responsibility for sub-agent.

The agent is responsible to the principal for the act of the sub agent.

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third person; the principal is not represented by, or responsible for the acts of the persons so employed,* nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

* Unless, of course, he ratifies them.—See s. 196, *infra*.

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195 In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unworthy, and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts* are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such act. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

Effect of ratification

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Ratification of unauthorized act cannot injure third person.

Illustrations.

(a.) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.*

Termination of agency.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency where agent has an interest in subject-matter.

Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

* That is, lawful acts.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation* to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied,

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority,

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent, and as to third persons.

Illustrations.

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

* See s. 73, *supra*.

(b.) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub-agent's authority.

Agents Duty to Principal.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal,* or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest actually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal

Skill and diligence required from agent.

* But see s. 189 *supra*.

in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(a.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as *e.g.*, by variation of rate of exchange—but not further.

(b.) A, an agent, for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the under writers. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival, the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213 An agent is bound to render proper accounts to his principal on demand.

214. It is the duty of an agent, in case of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions *
 Agent's duty to communicate with principal.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Right of principal when agent deals, on his own account, in business of agency without principal's consent.

Illustrations

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

* Secs. 189, *supra*.

(b.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option,

216. If an agent, without the knowledge of his principal, in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agent.

Illustration.

A directs B, his agent, to buy a certain house for him, B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An agent may retain * out of any sums received on deals account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale many not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

220. An agent, who is guilty of misconduct in the business of the agency,* is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(a.) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have

* See s. 221, *infra*.

† See ss. 195, 211, 212, 213, 214, 218, *supra*.

known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent's lien on principal's property, whether moveable or immovable of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him.*

Principal's Duty to Agent.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(a.) B, at Singapur, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B.† B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, thought it cause an injury to the rights of third persons.

Illustration.

(a.) A, a decree-holder, and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum, which he is compelled to pay to C, in consequence of obeying A's directions.

* As to the general lien of an agent who is a banker, factor, attorney, or policy-broker, see s. 171, *supra*.

† It must be assumed that the disclosed principal could not be sued, see s. 230, *infra*.

(b.) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards, C, the true owner of the goods, sues B, and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.*

Illustrations.

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. A thereupon beats C, and has to pay damages to C for so doing. B is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

lect or want of skill.

225. The principal must make compensation to his agent in respect of injury † caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with Third Persons.

226. Contracts entered into through an agent, and obligations arising from acts done by agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into, and the acts done, by the principal in person.

Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(b.) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound, when agent exceeds authority.

* See s 24, *supra* † Cf. the Indian Fatal Accidents Act (XII. of 1855).

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228 Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when
excess of agent's authority
is not separate

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Any notice given to, or information obtained by, the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to, or obtained by, the principal.

Consequences of notice
given to agent.

Illustrations.

(a.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally
enforce, nor be bound by,
contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract
to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :

(2) Where the agent does not disclose the name of his principal :

(3) Where the principal, though disclosed cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract ; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing, nor having reasonable ground to suspect, that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge, nor reasonable ground of suspicion, that such is the case. C cannot compel B to take rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C or both for the price of the cotton.

234. When a person who has made a contract with an agent, induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively,

235. A person untruly* representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

* See s 208, *supra*.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has, by his words or conduct, induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation in private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals;* but misrepresentations made or frauds committed by agents, in matters which do fall within their authority, do not affect their principals.

Effect on agreement, of misrepresentation or fraud by agent.

Illustrations.

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make. The contract is voidable as between B and C at the option of C.

(b.) A, the captain of B's ship signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.

OF PARTNERSHIP.

239. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.†

"Partnership" defined.

* See s. 250, *infra*.

† This would apply to members of Joint-stock Companies; but the law applicable to them is saved by s. 266, *supra*.

"Firm" defined.

Persons who have entered into partnership with one another are called collectively a "firm."

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them, A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with Lender not a partner by advancing money for share of profits. such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.†

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section. Properly left in business by retiring partner, or deceased partner's representative.

242. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner. Servant or agent remunerated by share of profits not a partner.

243. No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him. Widow or child of deceased partner receiving annuity out of profits, not a partner.

244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only Person receiving portion of profits for sale of goodwill not a partner.

† See *Mollwo, March, & Co. v. Court of Wards*, 10 B. L. R. 312.

of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.*

Responsibility of person leading another to believe him a partner.

partner in such firm.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a

Liability of person permitting himself to be represented as a partner.

246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.†

247. A person who is under the age of majority according to the law‡ to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm ; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Minor partner not personally liable, but his share is.

248. A person who has been admitted to the benefits of partnership under the age of majority‡ becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by, or on behalf of, the partnership ; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner.

Partner's liability for debts of partnership

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of co-partner.

251. Each partner, who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member,

Partner's power to bind co-partners.

* Cf. the Partnership Act, 1865 (28 & 29 Vict., c. 86), s. 4.

† See the Indian Evidence Act (I. of 1872), s. 109.

‡ See the Indian Majority Act (IX, of 1875).

binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership-business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of goods.

252. Where partners have by contract regulated and defined,

Annulment of contract, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all * of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership-business shall be equally divided between them. Afterwards they carry on the partnership-business for many years, A receiving one-half of the net profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supercedes the provision in the articles as to the division of profits.

Rules determining partner's mutual relations, where no contract to contrary.

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules :—

- (1) All partners are joint owners of all property originally brought into the partnership-stock, or bought with money belonging to the partnership, or acquired for

* Cf. s. 253, cl. 5 *infra*.

purposes of the partnership-business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss ;

- (2) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership :
- (3.) Each partner has a right to take part in the management of the partnership-business :
- (4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :
- (5) When differences arise as to ordinary matters connected with the partnership-business, the decision shall be according to the opinion of the majority of the partners ; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners *
- (6.) No person can introduce a new partner into a firm without the consent of all the partners :
- (7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :
- (8) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :
- (9) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court :
- (10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

254. At the suit of a partner, the Court may dissolve the partnership in the following cases :—

When Court may dissolve partnership.

- (1.) When a partner becomes of unsound mind :
- (2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :

* See s. 252, *supra*

- (3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :
- (4.) When any partner becomes incapable of performing his part of the partnership contract :
- (5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :
- (6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

256. If a partnership, entered into for a fixed term, be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

General duties of partners

Account to firm of benefit derived from transaction affecting partnership-

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(a.) A, B, and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B, and C, carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignment for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

262. Where there are joint debts due from the partnership and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm ; and if there is any surplus, then the share of each partner must be applied in payment of his separate debts, or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

265.† Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts,

* *Of the Mercantile Law Amendment Act 1856 (19 & 20 Vict., c. 97.) s. 4.*

† S. 265 has been substituted for the original section by the Indian Contract Amendment Act (IV. of 1866), s. 1.

and distribute the surplus according to the shares of the partners respectively.

Limited liability partnerships, incorporated partnerships, and joint-stock companies.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.*

SCHEDULE.—ENACTMENTS REPEALED.

Statutes.

No. and year of Statute	TITLE.	Extent of repeal.
Stat. 29 Car. II., cap. 3.†	An Act for prevention of Frauds and Perjuries	Sections 1, 2, 3, 4 and 17.
Stat. 11. annd 12 Vict. cap. 21.‡	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

Acts.

No. and year of Act.	TITLE.	Extent of repeal.
Act XIII. of 1840	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. IV., Chap. 83, as altered and amended by the Stat. 6 Geo. IV., Chap. 94.	The whole.
Act XIV. of 1840	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 9 Geo. IV., Chap. 14.	The whole.

* See the Indian Companies Act (VII. of 1912) and the following special Acts: V. of 1838 (Bengal Bonded Warehouse) as amended by V. of 1857 (Oriental Gas Company) as amended by XI. of 1867; the Presidency Banks Act (XI. of 1867); Madras Act VI. of 1869 (Madras Equitable Assurance Society) &c.

† Short title, "The Statute of Frauds."—See the Short Titles Act, 1896 (59 and 60 Vict., c. 14).

‡ The Indian Insolvency Act, 1848.

Acts.—(contd.)

No. and year of Act.	TITLE.	Extent of repeal.
Act XX. of 1844.	An Act to amend the law relating to Advances <i>bond fide</i> made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 5 & 6 Vict., c. 39, as altered by this Act.	The whole.
Act XXI. of 1848	An Act for avoiding Wagers.	The whole.
Act V. of 1866 *	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 & 10.
Act XV. of 1866	An Act to amend the law of partnership in India.	The whole.
Act VIII. of 1867	An Act to amend the law relating to Horse-racing in India.	The whole.

* Short title, "The Policies of Insurance (Marine and Fire) Assignment Act, 1866."—See the Indian Short Titles Act (XIV. of 1897).

ACT XV. OF 1872.*

The Indian Christian Marriage Act.

RECEIVED THE G.G.'S ASSENT ON THE 18TH JULY 1872.

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion ; It is hereby enacted as follows :—

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Christian Marriage Act, 1872 ;"

Extent. It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

Enactments repealed. 2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done, under any such enactment, shall be deemed to be respectively made, granted, given, issued, and done under this Act.

For clause xxiv. of section nineteen of the Court Fees Act, 1870, the following shall be substituted :—

"xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections forty-five and forty-eight."

Interpretation-clause. 3. In this Act, unless there is something repugnant in the subject or context—

* Act XV of 1872 has been declared, under the Scheduled Districts Act (XIV of 1874) to be in force in the following Scheduled Districts—

The Districts of Házaribágh, Lohárdagá, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum..... See *Gazette of India*, 1881, Pt. I., p. 504

The North-Western Provinces Taráí..... Ditto 1876, Pt. I., p. 505.
It has been declared in force in the Santhal Parganas by Reg. (III. of 1872), s. 3 as amended by Reg. (III. of 1899), s. 3 ; in the Arakan Hill District by Reg. 1 of 1916 s. 3 ; in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4 ; and in British Baluchistan by Reg. (II of 1913, s. 3)

“Church of England” and “Anglican” mean and apply to the Church of England as by law established ;

“Church of Scotland” means the Church of Scotland as by law established ;

“Church of Rome” and ‘ Roman Catholic’ mean and apply to the Church which regards the Pope of Rome as its spiritual head ;

“Church” includes any chapel or other building generally used for public Christian worship ;

“Minor” means a person who has not completed the age of twenty-one years, and who is not a widower or a widow ;

“Native State” means the territories of any Native Prince or State in alliance with Her Majesty ;

The expression “ Christians” means persons professing the Christian religion ;

And the expression “Native Christians” includes Christian descendants of Natives of India converted to Christianity, as well as such converts.

“Registrar General of Births Deaths and Marriages” means a Registrar General of Births, Deaths and Marriages” appointed under the Births, Deaths and Marriages Registration Act 1886:*

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4. Every marriage between persons, one or both of whom is “or are”† a Christian or Christians shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Marriages to be solemnized according to Act.

5. Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister ;

Persons by whom marriages may be solemnized.

* This paragraph was added by the Births, Deaths, and Marriages Registration Act (VI of 1886), s. 30 cl. (a).

† In s. 4 the words have been inserted by Act XII. of 1891, Sch. II.

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites ceremonies, and customs of the Church of Scotland ;

(3) by any Minister of Religion licensed under this Act to solemnize marriages ;

(4) by, or in the presence of, a Marriage Register appointed under this Act ;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

6* The Local Government so far as regards the territories under its administration, and the Governor-General in Council, so far as regards any Native State may, by notification in the local official Gazette or in the Gazette of India, as the case may be, grant licenses to Ministers of Religion to solemnize marriages within such territories and State respectively, and may, by a like notification, revoke such licenses.

7. The Local Government may appoint one or more Christians either by name, or as holding any office for the time being, to be the Marriage Registrars for any district subjects to its administration.†

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district or ill, or when his office is temporarily vacant, the Magistrate of the District shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

8. The Governor-General in Council may, by notification in the Gazette of India, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State, in alliance with Her Majesty.‡

* S. 6 has been substituted by Act II, of 1891, s. 1.

† See *Bombay Government Gazette*. Nov. 21. 1872, p. 1203 ; *British Burma Gazette*. June 28, 1873, p. 138.

‡ See *Gazette of India*, June 14, 1873, p. 550 Aug. 9, 1873, p. 712.

The Governor-General in Council may, by like notification, revoke any such appointment

9. The Local Government or (so far as regards any Native State) the Governor-General in Council may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Every marriage under this act shall be solemnized between the hours of six in the morning and seven in the evening :

Provided that nothing in this section shall apply to—

(1)—a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2)—a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, 'or

(3)—a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies, and customs of the Church of Scotland.”*

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church, “where worship is generally held according to the forms of the Church of England”†

unless there is no “such” ‡ church within five miles’ distance by the shortest road from such place, or

* In s. 10, cl (3) has been added by Act II. of 1891, s. 2.

† In s. 11 the words quoted have been inserted by Act II. of 1891, s. 3

‡ The words “such” has been inserted by Act II. of 1891, s. 3.

unless he has received a special license authorizing him to do so under the hand and seal of Anglican Bishop of the Diocese or his Commissary.

For such special license, the Registrar of the Diocese may charge with additional fee as the said Bishop from time to time authorizes.

Fee for special license.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein

- (a) the name and surname, and the profession or condition, of each of the persons intending marriage,
- (b) the dwelling place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to be solemnized :

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

But, if he is not entitled to officiate as a Minister in such church, he shall at his option, either return the notice to the person delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Return or transfer of notice,

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.

15. When one of the persons intending marriage is a minor,* every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration herein-after required, issue under his hand a certificate of such notice having been given and of such declaration having been made

Proviso,

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such minister ;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue ; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter† mentioned, by any person authorized in that behalf.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

Declaration before issue of certificate.

* See Act IX of 1875

† See s. 20.

- (a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage,

and, when either or both of the parties is or are a minor or minors,

- (b) that the consent or consents required by law* has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. The father, if living, of any minor, or, if the father be
Consent of father, or guardian, or mother dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to
Power to prohibit by notice issue of certificate, prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

21. If any such notice be received by such Minister, he
Procedure on receipt of notice. shall not issue his certificate, and shall not solemnize the said marriage, until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who gave it.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the
Issue of certificate in case of minority. consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

* See s 19,

23. When any Native Christian about to be married takes notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule thereto annexed, or to the like effect,

25 After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt :

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Whenever a marriage be solemnized within two months after the date of the certificate issued by such Minister as afore-said, such certificate and all proceedings (if any) thereon shall be void.

and no person shall proceed to solemnize the said marriage until new notice has been given, and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V. or Part VI. of this Act, shall be registered in manner hereinafter prescribed.

28. Every Clergyman of the Church of England shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

29. Every Clergyman of the Church of England shall send Quarterly returns to Arch-
deaconry. four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate:

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December of each year, respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar, upon receiving the said returns, shall send one copy thereof to "Registrar-General of Births, Deaths, and Marriages."*

30. Every marriage solemnized by a Clergyman of the Registration and returns
of marriages solemnized by
Clergyman of Church of
Rome. Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to the "Registrar-General of Births, Deaths, and Marriages"* returns of the entries of all marriages registered by him during the three months next preceding,

31. Every Clergyman of the Church Registration and returns
of marriages solemnized by
Clergyman of Church of
Scotland. of Scotland shall keep a register of marriages,

and shall register therein according to the tabular form set forth in third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the "Registrar-General of Births, Deaths, and Marriages,"* through the Senior Chaplain of the

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI. of 1886), s. 30, cl. (b). As to the establishment of General registry office of Births, Deaths, and Marriages, see Act (VI. of 1886), Chap. II.

Church of Scotland, returns similar to those prescribed in section 29, of all such marriages.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after solemnization thereof, be registered in duplicate by the person solemnizing the same ; (that is to say) in a marriage-register book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register book as a counterfoil.

33. The entry of such marriage in both the certificate and marriage-register book shall be signed by the person solemnizing the marriage, and also by persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register book.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register book, and send it, within one month from the time of the solemnization, to the Marriage Registrar of the District in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the "Registrar-General of Births, Deaths, and Marriages."*

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI. of 1896), s. 30, cl. (b).

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the "Registrar-General of Births, Deaths, and Marriages."*

Registrar to add number of entry to certificate, and send to Government.

37. When any marriage between Native Christians is solemnized under Part I. or Part III. of this Act the person solemnizing the same shall, instead of proceeding in the manner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Registration of marriages between Native Christians under Part I. or III.

Custody and disposal of register-book.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the District, or if there be more Marriage Registrars, who shall send it to the "Registrar-General of Births, Deaths, and Marriages,"* to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. When a marriage is intended to be solemnized by or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt, or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized :

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI of 1886), s. 30, cl. (b).

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

Publication of notice.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

40. The Marriage Registrar shall file all such notices, and keep them with the records of his office,

Notice to be filed, and copy entered in Marriage Notice Book.

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book ;"

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all person desirous of inspecting the same.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given, and of such oath having been made :

Certificate of notice given, and oath made.

Proviso.

Proviso—

that no lawful impediment be shown to his satisfaction why such certificate should not issue ;

that the issue of such certificate has not been forbidden in manner hereinafter mentioned, by any person authorized in that behalf by this Act ;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath*

Oath before issue of certificate.

* See Act X. of 1897, s. 3, cl. (36).

(a) that he or she believes that there is no^t any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his, or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, that there is no person resident in India authorized to give such consent, as the case may be.

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras, and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41.

And on sufficient cause being shown, the said judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor ;

and any person whose consent to such marriage would be required there-under may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Petition where person whose consent is necessary is insane.

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or unjustly withholds consent.

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns then to the District Judge :

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way :

And if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage ;

and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden,

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.

Petition when Marriage Registrar refuses certificate.

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon :

The decision of such Judge of the High Court or District Judge as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. Whenever a Marriage Registrar resident in any Native State refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor-General in Council, who shall decide thereon.

Petition when Marriage Registrar in Native State refuses certificate

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

48. Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if such district be not within any of the said towns, then to the District Judge:

Petition when Registrar doubts authority of person forbidding,

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same.

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue had not been forbidden,

Whenever a Marriage Registrar appointed under section 8 to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor-General in Council.

Reference when Marriage Registrar in Native State doubts authority of person forbidding.

If it appears to the Governor-General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor-General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

Procedure on reference,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden,

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect ;

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

51. After the issue of the certificate of Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect—

“I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*”

And each of the parties shall say to the other as follows, or to the like effect—“I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*).

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void ;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time, and in the manner aforesaid.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Marriage Registrar may ask for particulars to be registered.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate: that is to say, in a marriage-register book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register book as a counterfoil.

Registration of marriages solemnized under Part V.

The entry of such marriage in both the certificate and the marriage-register book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage,

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register book.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register book, and send it, at the end of every month to the "Registrar-General of Births, Deaths, and Marriages."*

Certificates to be sent monthly to Secretary to Government.

The Marriage Registrar shall keep safely the said register-book until it is filed, and shall then send it to the "Registrar-General of Births, Deaths, and Marriages,"* to be kept by him with the records of his office.

Custody of register-book.

56. The Marriage Registrars in Native States shall send the certificates mentioned in section 54 such officers as the Governor-General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.†

Officers to whom Registrars in Native States shall send certificates,

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI. of 1886). s. 30. cl. (b).

† As to the Central India Agency, see *Gazette of India*, 14th June 1873, p. 560; as to the Rajputana Agency, *ibid.*, 9 Aug. 1873, p. 712.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

59. The registration of marriage between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

PART VI.*

MARRIAGE OF NATIVE CHRISTIANS.

60. Every marriage between Native Christians applying for a certificate, shall, without the preliminary notice required under Part III., be certified under this Part, if the following conditions be fulfilled, and not otherwise :—

(1.) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years:

(2.) Neither of the persons intending to be married shall have a wife or husband still living :

* As to the validation of past marriages solemnized under Part VI. between persons of whom one only was a Native Christian, and penalty for solemnizing such marriages under Part VI. in future, see Act II. 1892.

(3.) In the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A. B.* in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*]," or words to the like effect;

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

61. When, in respect of any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and, on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

62.* (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar-General of Births, Deaths, and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as the Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(2) Where the person keeping the register-book was licensed as regards a Native State by the Governor-General in Council, references in sub-section (1) to the Local Government therein mentioned shall be read as references to the Local Government, to whose Registrar-General of Births, Deaths, and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (2), of the Births, Deaths, and Marriages Registration Act, 1886.

* S. 62 has been substituted by Act II. of 1891, s. 4.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register book under section 62, shall, at all reasonable times allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein.

64. The provisions of section 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics.

But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V. of Act No. XXV.* of 1864, previous to the twenty-third day of February 1865.

PART VII.

PENALTIES.

66.† Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

(a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.

* This Act was repealed by Act (V. of 1865) which again was repealed by this Act (XV. of 1872).

† S. 66 has been substituted by Act II. of 1891, s. 5.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by the law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code,

68.* Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize, in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years, and not exceeding ten years,

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV. of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*),†

and shall be liable to fine.

69. Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies, and customs of the Church of Scotland.‡

* S. 68 has been substituted by Act II. of 1891, s. 6.

† In s. 68, as amended by Act II. of 1891, certain words, repealed by Act XII. of 1891, Sch. I., has been omitted.

‡ In s. 69, the last para. has been added by Act II. of 1891, s. 7.

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III., shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate, or marrying, without publication of notice ;

71. A Marriage Registrar under this Act, who commits any of the following offences :—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act ;

(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage ; *

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar ;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person issuing certificate against authorized prohibition ; authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of "two"† months after the notice has been entered by him as aforesaid,

Issuing certificate after expiry of notice, or in case of minor, within fourteen days after notice, or against authorized prohibition.

* In s. 71, cl. (2), has been substituted by Act II. of 1891, s. 8.

† In s. 72 the word "two" has been substituted for the word "three" by Act II. of 1891, s. 8.

or knowingly and willfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal code.

Persons authorized to solemnize marriage other than Clergy of Churches of England, Scotland, or Rome ;

73. Where, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after a due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, ceremonies, and customs of that Church,

or, not being Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies, and customs of that Church,

knowingly and willfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing or causing to be affixed, the notice of such marriage as directed in Part III. of this Act, or after the expiration of two months after the certificate has been issued by him,

or knowingly and willfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District;

or knowingly and willfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue ;

solemnizing marriage authorizedly forbidden. or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI. of this Act, grants such certificate, intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Unlicensed person granting certificate pretending to be licensed

"Whoever, being licensed to grant certificates of marriage under Part VI. of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part, shall be punished with fine which may extend to one hundred rupees."*

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

Destroying or falsifying register books.

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

Limitation of prosecutions under Act.

PART VIII.

MISCELLANEOUS.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:—

What matters need not be proved in respect of marriage in accordance with Act

* In s 74 the second para. has been added by Act II. of 1891, s. 9.

(1.)—Any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

(2.)—The notice of the marriage:

(3.)—The certificate or translation thereof:

(4.)—The time and place at which the marriage has been solemnized:

(5.)—The registration of the marriage.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, Corrections of errors. within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof,

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the "Registrar General of Births, Deaths, and Marriages,"* such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

79 Every person solemnizing a marriage under this Act, and hereby required to register the same, Searches and copies of entries.

and every Marriage Registrar or "Registrar General of Births, Deaths, and Marriages"* having the custody for the time being of any register of marriages, or of any certificate or duplicate or copies of certificate under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate or duplicate or copies, and give a copy under his hand of any entry in the same,

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy,

81.* The Registrar General of Births, Deaths and Marriages and the officers appointed under section 56 shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to them respectively during such quarter, the certificates of marriages of which the Governor-General in Council may desire that evidence shall be transmitted to England, and shall send the same certificates signed by them respectively, to the Secretary of State for India

Certificates of certain marriages for Secretary of State

82. Fees shall be chargeable under the Act for—

Local Government to prescribe fees,

receiving and publishing notices of marriages ;

issuing "Certificates for Marriage"† by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issuing of "Certificates for Marriage"† by the said Registrars ;

searching register-books or certificates or duplicates or copies thereof ;

giving copies of entries in the same under section 63 and 79.

The Local Government shall fix the amount of such fees respectively,‡

and may from time to time vary or remit them, either generally or in special cases, as to it may seem fit.

* Section 81 has been substituted for the old section by Act III. of 1911.

† The words "Certificates for Marriage" have been substituted for the words "Certificates of Marriage" and also for the words "Marriage-certificates" by the Repealing and Amending Act (I of 1903) Sch. II. Pt. II.

‡ *Bombay Government Gazette*, 1873, p. 337. *N.W. Provinces Gazette*, 1873, p. 1088: *Punjab Gazette*, 1873, p. 74: *British Burma Gazette*, 1875, Pt. II, p. 133.

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section 82, the supply of register books, and the preparation and submission of returns of marriages solemnized under this Act.*

84 The powers conferred on the Local Government by section 82 and 83 may so far as regards Native States, be exercised by the Governor-General in Council.†

85. The Local Government, may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.‡

86 § (1) The powers and functions exercisable by the Governor-General in Council under sections 6, 8, 9, 47, 48, 56 and 84 shall, so far as regards any Native State which is within the political charge of a Local Government be exercised by that Local Government.* The exercised under this section by any Local Government of powers and functions under sections, 6, 8, 9 and 56 shall be by notification in the local official Gazette.

(2) The powers and functions exercisable under this Act by the Governor-General in Council may be delegated to, and exercised by, such officers as he may from time to time appoint in this behalf.

87. Nothing in this Act applies to any marriage performed by any Minister, Consul, or Consular Agent between subjects of the State which he represents and according to the laws of such State.

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into,

* *Fort St. George Gazette*, 1874, pp 501, 613.

† *Gazette of India*, 18th October 1873, p. 902.

‡ *Bombay Government Gazette*, April 10, 1873, p. 337 : *N.-W. Provinces Gazette*, Sept. 21, 1872, p. 1088 : *Punjab Gazette*, 1873, p. 74.

§ Section 86 has been added by Act 38 of 1920.

SCHEDULE I.

(See sections 12 and 38.)

NOTICE OF MARRIAGE.

To

a Minister [or Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith</i>	<i>Widower.</i>	<i>Carpenter</i>	<i>Of full age.</i>	<i>16, Clive Street</i>	<i>23, days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings' Street.</i>	<i>More than a month.</i>		

Witness my hand, this

day of

seventy-two.

(Signed)

JAMES SMITH.

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof, is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

(See sections 24 and 50).

CERTIFICATE OF RECEIPT OF NOTICE.

I,
do hereby certify that, on the day of , notice was duly entered in
my Marriage Notice Book of the marriage intended between the parties therein
named and described, delivered under the hand of one of the parties
(that is to say) :—

Names.	Condi- tion.	Rank or profes- sion.	Age.	Dwell- ing place.	Length of resi- dence.	Church, chap- el, or place of worship in which the marriage is to be solemn- ized.	District in which the other party resides, when the parties dwell in dif- ferent dis- tricts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>... ..</i>	<i>Minor.</i>	<i>20, Hastings' Street</i>	<i>More than a month.</i>		

and that the declaration or oath* required by section seventeen [or forty-one]
of 'The Indian Christian Marriage Act, 1872' has been duly made by the
said (*James Smith*).

Date of notice entered } The issue of this certificate has not been pro-
Date of certificate given } hibited by any person authorized to forbid the issue
 thereof.

Witness my hand, this day of *seventy-two.*

(Signed).

The certificate will be void, unless the marriage is solemnized on or before
the day of .

[The *italics* in the schedule are to be filled up, as the case may be, and the
blank division thereof is only to be filled up when one of the parties lives in
another district.]

* The words "or oath" have been inserted by the Repealing and Amending
Act (I. of 190), Sch. II., Pt. II.

SCHEDULE III.*

(See sections 28 and 31).

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns

of

MARRIAGES

for

The Archdeaconry of ... { *Calcutta.*
Madras.
Bombay.

I, ———, Registrar of the Archdeaconry of { *Calcutta,*
Madras,
Bombay, } do hereby certify
 that the annexed are correct copies of the originals and Official Quarterly
 Returns of Marriage within the Archdeaconry of { *Calcutta,*
Madras,
Bombay, } as made and
 transmitted to me for the quarter commencing the day of ending
 the day of in the year of Our Lord .

[Signature of Registrar.]

Registrar of the Archdeaconry of, { *Calcutta.*
Madras,
Bombay.

MARRIAGES solemnized at { *Allahabad.*
Barrackpore.
Bareilly.
Calcutta, etc., etc.

WHEN MARRIED.			NAMES OF PARTIES.											
Year.	Month.	Day.	Christian.	Surname.										
					Age.	Condition.	Rank or Profession.	Residence at the time of marriage.	Father's name and surname.	By Banns or license.	Signature of the parties.	Signature of two or more witnesses present.	Signature of the person solemnizing the marriage.	

* In Sch. III. for "(See section 28)" the words "(See sections 28 and 31)" have been inserted by Act XII. of 1891, Sch. II.

SCHEDULE IV.

(See sections 32 and 54.)

MARRIAGE REGISTER BOOK.

Number	WHEN MARRIED.		NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage	Father's name and surname.
	Day.	Month	Year	Christian name						Surname.
1				James,	26 years ...	Widower ...	Carpenter...	Alva	William White
				Martha	17 years ...	Spinster ...		Agua	John Duncan.

Married in the

This marriage was solemnized between us

{ James White, }
 { Martha Duncan, } in the presence of us { John Smith, }
 { } { John Green }

CERTIFICATE OF MARRIAGE.

Number.	WHEN MARRIED.		NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
			Christian name.	Surname.					
	Day.	Month	Year.						
1	...	...		James	26 years ..	Widower...	Carpenter.	Agra	William White.
				Martha ...	17 years ...	Spinster ...	.....	Agra	John Duncan.

Married in the

This marriage was solemnized between us { *James White.* } in the presence of us { *John Smith.* }

{ *Martha Duncan.* }

{ *John Green.* }

SCHEDULE V.

(See section 2)

ENACTMENTS REPEALED.

Number and year.	TITLE	Extent of repeal.
Statute 58 Geo. 3, cap. 84.	An act to Remove Doubts as to the Validity of certain Marriages had and solemnized within the British territories in India.	The whole.
Statute 11 & 15 Vict., cap. 40	An act for Marriages in India ...	The whole.
Act No V. of 1852	An act for giving effect to the provisions of an act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	So much as has not been repealed.
Act No. V. of 1865	The Indian Marriage Act, 1865 ..	The whole Act, except so far as to relates to the Straits Settlements.
Act No. XII. of 1866.	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the cantonments of Secunderabad, Trimungherry, and Aurungabad	The whole

ACT XVIII. OF 1872.*

RECEIVED THE G.-G.'S ASSENT ON THE 29TH AUGUST 1872.

An Act to Amend the Indian Evidence Act, 1872.

Preamble.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872 ; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Indian Evidence Act Amendment Act ;"

Amendment of Act I. of 1872, section 32, clauses 5 and 6,

2. In section 32 of the Indian Evidence Act, 1872, clauses 5 and 6, after the word "relationship," the words "by blood, marriage, or adoption" shall be inserted.

3. In section 41 of the same Act, lines 17, 20, and 23, after the word "judgment," the words "order or decree" shall be inserted.

4. In section 45 of the same Act, line 5, after the word "art" the words "or in questions as to identity of handwriting shall be" inserted.

Amendment of section 57.

5. In section 57 of the same Act paragraph 13 after the word "road," the words "on land or at sea" shall be inserted.

Amendment of section 66.

6. In section 66 of the same Act, line 5, after the word "is," the words "or to his attorney or pleader" shall be inserted.

* For Statements of Objects and Reasons, see *Gazette of India*, 1872, Pt. V, p. 631 ; for Proceedings in Council, see *ibid*, 1872, supplement, pp. 922, 923, and 950. Act XVIII of 1872 has been declared in force in the Santhal Parganas by Reg. (III of 1872), s. 3. as amended by Reg. (III of 1899), s. 3 ; and in the Arakan Hill District by Reg. (IX of 1874), s. 3.

It has been declared to be in force by the Scheduled Districts Act (XIV of 1874) in the following Scheduled Districts, *viz* :—

The Districts of Hazaribagh, See *Gazette of India* ... 1881, Pt. I., p. 504.

Lohardaga and Manbhum,
and Pargana Dhalbhum and
the Kolhan in the District of
Singbhum (The District of
Lohardaga then included in
the Palamau District separated in 1894) ...

The North-Western Provinces

Tara1 ...

Ditto ... 1876, Pt. I., p. 505.

7. section 91 of the same Act Exception 2, for the words "under the Indian Succession Act," the words "admitted to probate in British India," shall be substituted.

Amendment of section 91.

8. [*Amendment of section 92*] *Repealed by Act XII. of 1876.*

9. In section 108 of the same Act line, 1 of the word "When", the words "Provided that when" shall be substituted; and, in the last line, for the word "on," the words "shifted to" shall be substituted.

Amendment of section 108.

10. In section 126 of the same Act, line 22, and in section 128 of the same Act, line 6, after the word "Barrister," the word "pleader" shall be inserted.

Amendment of sections 126 and 128.

In section 126 of the same Act, line 15, for the word "criminal," "the word illegal" shall be substituted.

11. In section 155 of the same Act, paragraph 2, for the word "bad," the word "accepted" shall be substituted.

Amendment of section 155.

ACT XIX. OF 1872.

The Indian Penal Code Amendment Act, 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH AUGUST 1872.

An Act to amend the definition of 'Coin' contained in the Indian Penal Code.

WHEREAS it is expedient to amend the definition of 'coin' contained in the Indian Penal Code, section, 230 ; It is hereby enacted as follows :—

Preamble.

Amendment of section 230, Act XLV. of 1860.

1. For the first paragraph of the said section, the following shall be substituted :—

"230." [*See supra, p. 448.*]

* The Short Title was given by the Indian Short Titles Act (XVI. of 1897)

Act XIX of 1872 has been declared to be in force in the Santhal Parganas by Reg. (III of 1872), s. 3, as amended by Reg. (III. of 1899), s. 3, and in the Arakan Hill District by Reg. (IX. of 1874), s. 3.

ACT XX OF 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 5TH SEPTEMBER 1872.

An Act to amend Act No. V of 1872

WHEREAS it is expedient to amend Act No. V of 1872 (to
Preamble *remove doubts as to the jurisdiction of the*
High Court of Bombay over the Province of
Sindh); It is hereby enacted as follows :—

Sections added to Act V
of 1872

1. The said Act shall be construed as if
the following section were added thereto :—

“ 2, 3, 4.” [*See supra, p. 1106*]

ACT NO. III. OF 1873.

The Madras Civil Courts Act.

RECEIVED THE G.-G.'s ASSENT ON THE 21ST JANUARY 1873

An Act to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called "The Madras Civil Court Act, 1873 :"

Local extent. It extends to all the territories for the time being under the government of the Governor of Fort St. George in council, except the Tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam ;

Commencement. And it shall come into force on the first day of March 1873.

2, [*Repealed by Act XII. of 1873.*]

PART II.

ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS.

3. The number of District (heretofore designated Zila, Courts to be established or continued under this Act shall be fixed, and may from time to time be altered, by the Local Government :*

4. The number of Subordinate Judges and District Munsifs to be appointed under this Act for each District shall be fixed, and may from time to time be altered, by the Local Government :*

* Certain words after this have been omitted by Act 4 of 1914.

Court's locality.

5. The place at which any Court under this Act shall be held may be fixed, and may, from time to time, be altered—

in the case of a District Court or a Subordinate Judge's Court—by the Local Government ;

In the case of a District munsif's Court—by the High Court.

The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.*

Appointment to vacancy in office of District Judge or Subordinate Judge.

6. Whenever the office of the Judge of a District Court (hereinafter called a 'District Judge') or of a Subordinate Judge under this Act is vacant,†

the Local Government shall appoint to the office such duly qualified person as it thinks proper.

Appointment to vacancy in office of District Munsif.

7. Whenever the office of a District Munsif under this Act is vacant,†

the High Court shall appoint to the office such person as it thinks fit :

Provided that he possesses the qualifications for the time being required by the rules in this behalf which the High Court, with the previous sanction of the Local Government, are hereby empowered to make and alter.

Every appointment made under this section shall be published in the same manner as appointments made by the Local Government.

Annulment of appointments.

The Local Government may, for good and sufficient reason, annul any appointment made under this section.

8. The present District Court, Subordinate Judges, and District Munsifs.

Zila Courts, Principal Sadr Amins, and District Munsifs, shall be respectively, the first "District Courts," "Subordinate Judges," and "District Munsifs" under this Act.

9. Every Court under this Act shall use a seal of such form and dimensions as are, for the time being, prescribed by the Local Government.

Seal of Court.

* This clause has been added by Act XXI. of 1885, s. 2.

† Certain words after this have been omitted by Act 10 of 1914

PART III.

JURISDICTION.

Local limits of jurisdiction of District Court or Subordinate Judge.

10. The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any District Judge or Subordinate Judge under this Act :

Provided that, where more than one Subordinate Judge is appointed to any district, the District Judge may assign to each such Subordinate Judge the local limits of his particular jurisdiction within such district.

Local limits of jurisdiction of each of several Subordinate Judges.

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act.

Local jurisdiction of District Munsifs.

11. The High Court shall fix, and may from time to time modify, the local jurisdiction of District Munsifs.

If the High Court assigns the same local jurisdiction to two or more District Munsifs, it shall declare which of them shall be deemed the Principal District Munsif, and the other or others shall be called Additional District Munsifs, and shall take cognizance only of such suits and applications as may, by special or general order in this behalf, be directed by the District Judge.*

12. The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature.

Jurisdiction of District Judge or Subordinate Judge in original suits.

The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed "three thousand"† rupees.

Jurisdiction of District Munsif.

NOTES.

Partition.—The jurisdiction of the court has to be determined with reference to the value of the whole property to be partitioned and not that of the share claimed by the plaintiff—8M. 235. But See 20M 289; 22B. 315 : 15 M 69—1 M. L. J. 481.

A suit by a Mahomedan to be declared the heir of a deceased Mahomedan, and for the recovery of his share of the inheritance, is within the jurisdiction of a District Munsif, when the value of such share does not exceed the pecuniary limits of the court's jurisdiction, though the value of the whole estate may exceed those limits. 11 L. 140. But see 15 M 501.

See also 5 M 284 (F. B); 7 M 397; 14 M 188; 19 M 56; 8 M 548 (F. B.)

* In s. 11, the second clause has been added by Act XXI. of 1885 s. 3.

† The words within quotations have been substituted by Mad. Act III of 1916.

13. Regular or special appeals* shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit† exceeds rupees five thousand, in which case the appeal shall lie to the High Court :

Provided that, whenever a Subordinate Judge's Court is established in any district at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter :

Provided also that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsifs, preferred in the District Court, to any Subordinate Judge within the district.

NOTES.

Vide 16 M. 326; 13 M 520 ; 17 M 78; 23 M 314; 40 M 1.

14.† When the subject-matter of any suit or proceeding is land, a house, or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court-fees Act, 1870, section seven clause 5.

NOTES.

Vide 15 M. 237 (F. B.); (1914) M. W. N. 373.

15. Every Court under this Act may require a witness or party to any suit or other proceeding pending in such Court to make such oath or affirmation as is prescribed by the law for the time being in force.

* In s. 13, certain words repealed by Act XII of 1891, Sch. I., have here been omitted.

† i. e., the original suit, 7 Mad. A. C. Rep 356.

† S. 14 is repealed in local areas to which rules under s. 3 of Act VII of 1887 apply.—See s. 6 of that Act

16. Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution.

Law administered by Courts to natives.

(a) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, or

(b) any custom (if such there be) having the force of law, and governing the parties or property concerned,

shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished

(c) In cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience.*

NOTES.

vide 4 M. 448 ; 24 M. 513 ; 8 Ind. Cas. 412 ; 16 M. L. T. 17.

17. No District Judge, Subordinate Judge, or District Munsif, shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

Judges not to try suits in which they are interested ;

No District Judge or Subordinate Judge shall try any appeal nor appeals from decrees against a decree or order passed by himself passed in other capacities. in another capacity.

When any such suit, proceeding, or appeal comes before any such officer, he shall report the circumstances to the Court to which he is immediately subordinate.

Mode of disposing of such suits and appeals.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section 6.†

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

NOTES.

This section makes no distinction whether a judge is a real or nominal party 38 M. 531.

* This is equivalent to s. 17 of Mad. Reg. II. of 1802, as to which see 9 Moo. 1. A. Cases 195 and 303.

† Now see s. 24 of Act V. of 1908.—See s. 158 of that Act.

PART IV.

MISCONDUCT OF JUDGES.

18. Any District Judge, Subordinate Judge, or District Munsif, may, for any misconduct, be suspended or removed by the Local Government.

Suspension of Judge by Local Government.

19. The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge pending the orders of the Local Government.

Suspension of Subordinate Judge by High Court.

The High Court shall immediately report the circumstances of such suspension,

and the Local Government shall make such order thereon as it thinks fit.

20. The High Court may suspend any District Munsif who is alleged to have misconducted himself, or may appoint a commission for enquiring into his alleged misconduct.

Suspension of District Munsif by High Court.
Commission of enquiry.

The provisions of Act No. XXXVII. of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

Exercise by High Court of powers conferred on Government by Act XXXVII. of 1850.

On receiving the report of the result of any such enquiry, the High Court may, if it think fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

21. The District Judge may suspend from office, whenever he sees urgent necessity for so doing, any District Munsif under his control.

Suspension of District Munsif by District Judge.

Whenever a District Judge exercises the power conferred by this section, he shall forthwith send to the High Court a full report of the circumstances of the case, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

Report to High Court.

PART V.

MINISTERIAL OFFICERS.

22. The ministerial officers of the District Courts shall be appointed, and may be suspended or removed, by the Judges of such Courts, whose orders in such matters shall, "subject to the control of the High Court"* be final.

Appointment, etc., of ministerial officers of District Courts.

23.† "Subject to such rules as the Local Government may prescribe,"‡ the ministerial officers of the Courts of the Subordinate Judges and District Munsifs shall be appointed by such Subordinate Judges and District Munsifs, respectively, subject to the control of the District Judge within whose jurisdiction such Courts are situate, and may, "subject to the control of the High Court,"§ be suspended or removed from office either by the said District Judge or (subject to his "control"§) by such Subordinate Judges and District Munsifs, respectively.

Appointment and removal of ministerial officers of subordinate Courts.

24. Every appointment under this Part shall be made subject to such rules as the Local Government from time to time prescribe on this behalf.

Rules regulatnig such appointments.

Every person appointed under this Part shall perform such duties as may from time to time be imposed upon him by the presiding officer of the Court to which he belongs.

Duties of ministerial officers.

The present ministerial officers of the Courts under this Act shall be deemed to have been appointed under this Part.

Present ministerial officers.

|| **24. A. (1.)** The High Court may transfer all or any of the ministerial officers of any Civil Court subject to its superintendence to any other such Court.

Transfer of ministerial officers.

(2.) The District Judge may transfer all or any of the ministerial officers of any Civil Court under his control to any other such Court.

* In s. 22 the words quoted have been inserted by Act XXI. of 1885' s. 4,

† S 23 has been substituted for the original by Act XIX. of 1877, s. 2,

‡ The words within quotations have been inserted by Madras Act IV of 1919.

§ In s. 23 the words quoted have been inserted by Act XXI. of 1885, s. 4.

|| Sections 24A has been substituted for the old one by Act 4 of 1914.

PART VI.

MISCELLANEOUS.

Temporary discharge of
duties of District Judge.

25. In the event of the death of the District Judge,

or of his being incapacitated by illness or otherwise for the performance of his duties,

or of his absence from the station in which his Court is held,

the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the District Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes, and the like,

and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto.

26. The District Judge, on the occurrence within his district of any vacancy in the office of District Munsif, may, pending the orders of the High Court thereon, appoint such person as he thinks fit to act in such office; and he shall at once report to the High Court the occurrence of every such vacancy and such appointment.

District Judge may nominate to vacancy in office of District Munsif.

27. Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act* in any district is vested in the District Judge.

District Judge to control Civil Courts of District

NOTES.

Vide 8 M. H. C. App. 10,

Investiture of Subordinate Judge with Small Cause jurisdiction.

28. The Local Government may, by notification in the official Gazette, invest, within such local limits as it shall from time to time appoint,

* Whether in exercise of jurisdiction as Courts of Small Causes or otherwise, 8 Mad. H. C. Rulings X.

any "District or"* Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees five hundred,

and any District Munsif with the same jurisdiction up to the amount of rupees fifty, "or, on the recommendation of the High Court, up to any amount not exceeding rupees two hundred,"*
Investiture of District Munsif with similar jurisdiction.

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the "District or"* Subordinate Judge or Munsif so invested.

NOTES.

Vide 19 M. 445.

29. [*Para. 1, repealed by Act IX. of 1887, and paras. 2 and 3 Repealed by Act XII. of 1891, Sch. I.*]

30. The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate two months in each year.
Vacation.

* In s. 28 the words quoted have been inserted by Act XXI. of 1885, s. 5.

ACT NO. V. OF 1873.***The Government Savings Bank Act.**

RECEIVED THE G.-G.'s ASSENT ON THE 28TH JANUARY 1873.

An Act to amend the Law relating to Government Savings Banks.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks ; It is hereby enacted as follows :—

Preamble,

Preliminary.

Short title, 1. This Act may be called "The Government Savings Banks, Act, 1873;"

Local extent. It extends to the the whole of British India.

Commencement. [*Repealed by Act XVI. 1874.*]

2. [*Repealed by Act. 1873.*]

Interpretation-clause. **3. In this Act—**

"Depositor" means a person by whom, or on whose behalf, money has been herefore, or shall be hereafter, deposited in a Government Savings Bank, and "depo-it" means money so deposited:

"Secretary" includes every person empowered to mannage a Government Savings Bank.

and "minor" means a person who is not deemed to have attained his majority under the Indian Majority Act; 1875,†

Deposits belonging to the Estates of deceased Persons.

Payment on death of depositor. **4. If a depositor dies, leaving in a Government Savings Bank a sum of money not exceeding "three thousand rupees,"‡**

* Act V. of 1873 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts; The Districts of Hazaribagh, Lohardanga, and Manbhum, and Fargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I, P 504.

It has been declared to be in force in the Santhal Parganas by Reg. (III. of 1872), s. 3, as amended by Reg. (III. of 1899) s. 3; in the Arakan Hill District Reg. I of 1916 s. 2; and in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4.

† This new definition of "minor" has been substituted by Act 13 of 1916.

‡ The words within quotations have been substituted by Act 17 of 1917.

and if probate of his will or letters of administration of his estate, or a certificate granted under Act No XXVII. of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), is not produced to the Secretary of such Bank within three months of death of the said depositor,

the Secretary of such bank may pay the said sum of money to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid:

Payment to be a discharge

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Saving of right of executor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or* Act No. XXVI. of 1855,† to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Saving of right of creditor.

6. The Secretary of any such Bank may take such security as he thinks necessary from any person to whom he pays any money under section four for the due administration of the money so paid,

Security for due administration.

and he may assign the said security to any person interested in such administration.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.‡

Power to administer oath

* The words "the said" being repealed by Act (XII. of 1891) Sch. I. have been omitted.

† Repealed by this Act, s. 2.

‡ See Act X. of 1873, *infra*.

Any person who, upon such oath or affirmation makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of an offence under section one hundred and ninety-three of the Indian Penal Code.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed "three"* thousand rupees, such amount shall be excluded in computing the fee chargeable, under the Court-fees Act, 1870, on the probate, or letters of administration, or certificate (if any), granted in respect of his property:†

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer, or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

Deposits belonging to Minors.

10. Any deposit made by, or on behalf of, any minor, may be paid to him personally, if he made the deposit, or to his guardian for his use, if the deposit was made by any person other than the minor, together with the interest accrued thereon.

The receipt of any minor or guardian, for money paid to him under this section, shall be sufficient discharge therefor.

11. All payment of deposits heretofore made to minors or their guardians by any Secretary of Government Savings Bank shall be deemed to have been made in accordance with law,

Deposits belonging to Lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

* The words within quotations have been substituted by Act 17 of 1917.

† See 9 Geo. IV., c. 92, s. 40.

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a Committee or Manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such Committee or Manager.

Deposits made by Married Women.

13. Any deposit made by or on behalf of a married woman, or Payment of married by or on behalf of a woman who afterwards woman's deposits. marries, may be paid to her, whether or not the Indian Succession Act, 1865, section 4, applies to her marriage and her receipt for money paid to her under this section shall be a sufficient discharge therefor.

Rules.

14. All certificates under section 8, and all payments under section 10, section 12, or section 13, shall be Rules regulating certificates under section 8, and payments under section 10, 12, or 13. respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time to time, prescribe.

ACT NO. VIII. OF 1873.*

The Northern India Canal and Drainage Act.

RECEIVED THE G-G'S ASSENT ON THE 11TH FEBRUARY 1873.

An Act to regulate Irrigation, Navigation, and Drainage in Northern India.

WHEREAS, throughout the territories to which this Act extends, the Government is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water; and whereas it is expedient to amend the law relating to Irrigation, Navigation, and Drainage in the said territories; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called 'The Northern India Canal and Drainage Act, 1873.'

It extends to the territories for the time being respectively under the government of the Lieutenant-Governors of the North-Western Provinces

Local extent.

and the Punjab, and under the administration of the Chief Commissioners of Oudh, and Central Provinces; and applies to all lands, whether permanently settled, temporarily settled, or free from revenue.

*[Commencement.] Repealed by Act XVI. 1874.*2. *[Repeal of Acts] Repealed by Act XVI of 1874.*

Interpretation-clause.

3. In this Act—unless there be something repugnant in the subject or context—

"Canal"

(1) "Canal"† includes —

* Act VIII. of 1873 has been extended by notification under the Scheduled Districts Act (XIV, of 1874), to the Tarai Parganas—See Notification No. 1554 dated September 22, 1876 published in the *Gazette of India*, 1876 Pt I., p. 506, and in the *North Western Provinces Gazette*, 1876 Pt II p. 1279 Declared not to apply to any canal which is for the time being included under either Sch. I or Sch. II to the Punjab Minor canals Act of 1905 (Pun. Act 3 of 1905)—See s 2 (3) of that Act.

† But see s. 74 *Infra*.

- (a) all canals, channels and reservoirs constructed, maintained or controlled by Government for the supply or storage of water,
- (b) all works, embankments, structures, supply and escape channels connected with such canals, channels, or reservoirs,
- (c) all water-courses as defined in the second clause of this section,
- (d) any part of a river, stream, lake or natural collection of water, or natural drainage-channel, to which the Local Government has applied the provisions of Part II. of this Act,

(2) "Water-course" means any channel which is supplied with water from a canal but which is not maintained at the cost of the Government and all subsidiary works belonging to any such channel,

(3) "Drainage-work" includes escape-channels from a canal, dams, weirs, embankments, sluices, groins, and other works for the protection of lands from flood or from erosion, formed or maintained, by the Government under the provisions of Part VII of this Act, but does not include works for the removal of sewage from towns ;

(4) "Vessel" includes boats, rafts, timber, and other floating bodies;

(5) "Commissioner" means a Commissioner of a Division, and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner;

(6) "Collector" means the head revenue-officer of a district, and includes a deputy Commissioner or other officer appointed under this Act to exercise all or any of the powers of a Collector;

(7) "Canal-officer" means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof;

"Superintending Canal-officer" means an officer exercising general control over a canal or portion of a canal;

"Divisional Canal Officer" means an officer exercising control over a division of a canal;

"Sub-Divisional Canal-officer" means an officer exercising control over a sub-division of a canal;

(8) "District" means a district as fixed for revenue purposes.

4. The Local Government may from time to time declare, by notification in the official Gazette, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

All officers mentioned in section 3, clause (7), shall be respectively subject to the orders of such officers as the Local Government from time to time directs.

PART II.

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

5. Whenever it appears expedient to the Local Government that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal or drainage-work,

Notification to issue when water-supply is to be applied for public purposes.

the Local Government may, by notification in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

6. At any time after the day so named, any Canal-officer, acting under the orders of the Local Government in this behalf, may enter on any land, and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

Powers of Canal-officer.

7. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that the Government intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section 8 may be made before him.

Notice as to claims for compensation.

Damage for which compensation shall not be awarded.

8. No compensation shall be awarded for any damage caused by—

- (a) stoppage or diminution of percolation or floods ;
- (b) deterioration of climate or soil ;
- (c) stoppage of navigation, or of the means of drifting timber or watering cattle ;
- (d) displacement of labour.

Matters in respect of which compensation may be awarded.

But compensation may be awarded in respect of any of the following matters :—

- (e) Stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground, in use at the date of the said notification :
- (f) Stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification :
- (g) Stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification :
- (h) Damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the Indian Limitation Act, 1877, Part IV :*
- (i) Any other substantial damage, not falling under any of the above clauses (a), (b), (c), or (d), and caused by the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed ; and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clauses (e), (f), or (g) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against the Government, except by grant or under the Indian Limitation Act, 1877, Part IV.*

And no right to any of the advantages referred to in clauses (a), (b), and (c) of this section shall be acquired, as against the Government, under the same Part.

9. No claim for compensation for any such stoppage, diminution, or damage shall be made after the expiration of one year from such stoppage, Limitation of claims.

* The references to Part IV. of Act IX. of 1871 are altered in accordance with Act XV. of 1877, s. 2, but now see Act. IX. of 1908.

diminution, or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

10.* The Collector shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant; and sections 9 to 12 (inclusive), 14 and 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51, 57, 58, and 59 of the Land Acquisition Act, 1870,† shall apply to such enquiries :

Provided that, instead of the last clause of the said section 26, the following shall be read : " The provisions of this section and of section 8 of the Northern India Canal and Drainage Act, 1873, shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded."

11. Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under section 8, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduce the value of the holding.

12. If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

13. All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution, or damage complained of,

and simple interest, at the rate of six per cent. per annum, shall be allowed on any sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

* As to the application of s. 10 in case of claims to compensation on account of drainage-works, see s. 61, *infra*.

† Act X. of 1870 has been repealed by Act I. of 1894.

PART III.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS.

Power to enter and survey, etc. **14.*** Any Canal-officer or other person acting under the general or special order of a Canal-officer,

may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon ;

and dig and bore into the sub-soil ;

and make and set up suitable land-marks, level-marks, and water-gauges ;

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or protected canal under the charge of the said Canal officer,

and where otherwise such enquiry cannot be completed, such officer or other person may cut down Power to clear land. and clear away any part of any standing crop, fence, or jungle;

and may also enter upon any land, building, or water-course on Power to inspect and regulate water supply. account of which any water rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied or of measuring the lands irrigated thereby or chargeable with a water rate, and of doing all things necessary for the proper regulation and management of such canal.

Provided that, if such canal-officer or person proposes to enter Notice of intended entry into houses. into any building or enclosed court or garden attached to a dwelling house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court, or garden at least seven days' notice in writing of his intention to do so.

In every case of entry under this section, the Canal officer Compensation for damage caused by entry shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section; and in case of dispute as to the sufficiency of the amount so tendered, he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

* As to the application of s. 14 in the case of proposed drainage-works, see s. 55, *infra*.

15. In case of any accident happening or being apprehended to a canal, any Divisional Canal-officer, or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

In every such case, such Canal-officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal-officer shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the Local Government had directed occupation of the lands under section forty-three of the Land Acquisition Act, 1870.

16. Any persons desiring to use the water of any canal may apply in writing to the Divisional or sub-Divisional Canal-officer of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer to construct or improve a water-course at the cost of the applicants.

The application shall state the works to be undertaken, their approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal-officer, and how the payment is to be made.

When the assent of the Superintending Canal-officer is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Any amount becoming due under the terms of such application, and not paid to the Divisional Canal officer, the person authorized by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land revenue.

17. There shall be provided, at the cost of Government, suitable means of crossing canals constructed or maintained at the cost of Government, at such places as the Local Government thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Collector shall cause enquiry to be made into the circumstances of the case, and, if he thinks that the statement is established, he shall report his opinion thereon for the consideration of the Local Government, and the Local Government shall cause such measures in reference thereto to be taken as it thinks proper.

18. The Divisional Canal officer may issue an order to the persons using any water-course to construct suitable bridges, culverts, or other works for the passage of the water of such water-course across any public road, canal, or drainage-channel in use before the said water-course was made, or to repair any such works.

Persons using water-course to construct works for passing water across roads

If they fail, Canal-officer may construct.

Such order shall specify a reasonable period within which such construction or repairs shall be completed;

and, if, after the receipt of such order, the persons to whom it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal-officer, he may with the previous approval of the Superintending Canal-officer, himself construct or repair the same:

and, if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal-officer, the amount shall, on the demand of the Divisional Canal-officer, be recoverable from them by the Collector as if it were an arrear of land-revenue.

19. If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water-course with others, neglects or refuses to pay his share of the cost of such construction or maintenance, or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-divisional Canal-officer, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of a fortnight from the service, he will investigate the case; and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Adjustment of claims between persons jointly using water-course.

Such order shall be appealable to the Commissioner, whose order thereon shall be final.

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector, from the person directed to pay the same, as if it were an arrear of land-revenue.

20. Whenever application is made to a Divisional Canal-officer for a supply of water from a canal, and it appears to him expedient that such supply should be given, and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed; and, after making enquiry on such day, the Divisional Canal-officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

When such officer determines that a supply of canal-water may be conveyed through any water-course as aforesaid, his decision shall, when confirmed or modified by the Superintending Canal-officer, be binding on the applicant, and also on the persons responsible for the maintenance of the said water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first cost of such water-course as the Divisional or Superintending Canal-officer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it.

NOTES.

. Vide 71 P. R. 1888 ; 144 P. R. 1894.

21. Any person desiring the construction of a new water-course may apply in writing to the Divisional Canal-officer, stating—

(1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass, a right to occupy so much of the land as will be needed for such water-course ;

(2) that he desires the said Canal-officer, in his behalf and at his cost, to do all things necessary for acquiring such right ;

(3) that he is able to defray all costs involved in acquiring such right and constructing such water-course.

Procedure of Canal-officer
thereupon.

22. If the Divisional Canal-officer con-
siders—

- (1) that the construction of such water-course is expedient, and
- (2) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section twenty-eight;

and, upon such deposit being made, he shall cause inquiry to be made into the most suitable alignment for the said water course, and shall mark out the land which in his opinion it will be necessary to occupy for the construction thereof and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Collector of every district in which any part of such land is situate.

23. Any person desiring that an existing water-course should be transferred from its present owner to himself may apply in writing to the Divisional Canal-officer stating—

(1) that he has endeavoured unsuccessfully to procure such transfer of such water-course,

(2) that he desires the said Canal-officer in his behalf and at his cost to do all things necessary for procuring such transfer ;

(3) that he is able to defray the cost of such transfer.
Procedure thereupon. If the Divisional Canal-officer considers—

(a) that the said transfer is necessary for the better management of the irrigation from such water course, and

(b) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of section 28 in respect of such transfer ;

and, upon such deposit being made he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district, through which such water-course passes.

24. Within thirty days from the publication of a notice under section 22 or section 23, as the case may be, any person interested in the land or water-course to which the notice refers may apply to the collector by petition, stating his objection to the construction of transfer for which application has been made.

The collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal-officer of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section and the grounds thereof.

NOTES.

Vide 74P. R. 1907=16P. L. R. 1908.

25. If no such objection is made, or (where such objection is made) if the collector over-rules it, he shall give notice to the Divisional Canal-officer to that effect and shall proceed forth-with to the place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

NOTES

Vide 64P. R. of 1897.

26. If the collector considers any objection made as aforesaid to be valid, he shall inform the Divisional Canal-officer accordingly ; and if such officer sees fit, he may in the case of an application under section 21 alter the boundaries of the land so marked out and may give fresh notice under section 22 ; and the procedure herein-before provided shall be applicable to such notice, and the collector shall thereupon proceed as before provided.

Procedure when objection is held valid
Procedure when Canal officer disagrees with Collector.

27. If the Canal-officer disagrees with the Collector, the matter shall be referred for decision to the Commissioner.

Such decision shall be final, and the Collector, if he is so directed by such decision, shall, subject to the provisions of section 28, cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be,

28. No such applicant shall be placed in occupation of such land or water-course, until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

In determining the compensation to be made under this section, the Collector shall proceed under the the provisions of the Land Acquisition Act 1870;* but he may, if the person to be compensated so desire, award such compensation in the form of a rent-charge payable in respect of the land or water-course occupied or transferred.

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collector as if it were an arrear of land-revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

29. When any such applicant is placed in occupation of land or of water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest:—

First—All work necessary for the passage across such water-course, of water-courses existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Divisional Canal-officer.

Second—Land occupied for a water-course under the provisions of section 22 shall be used only for the purpose of such water-course.

Third—The proposed water course shall be completed to the satisfaction of the Divisional Canal-officer within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or water-course is transferred on the terms of a rent-charge—

Fourth—The applicant or his representative in interest shall, so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation.

Fifth.—If the right to occupy the land cease owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative in interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Collector determines.

Sixth.—The Collector may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due, or assess the amount of such compensation; and, if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six per cent. per annum from the date on which it became due, as if it were an arrear of land revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this section are not complied with,

or if any water-course constructed or transferred under this Act is disused for three years continuously,

the right of the applicant, or of his representative in interest, to occupy such land or water-course shall cease absolutely.

30. The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extension or alteration of a water-course, and for the deposit of soil from water-course clearances.

Procedure applicable to occupation for extensions and alterations.

PART IV.

OF THE SUPPLY OF WATER.

31. In the absence of a written contract, or so far as any such contract does not extend, every supply of canal-water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the Local Government in respect thereof.

In absence of written contract, water-supply to be subject to rules.

Conditions as to—

32. Such contracts and rules must be consistent with the following conditions:—

(a.) The Divisional Canal-officer may not stop the supply of water to any water-course, or to any person, except in the following cases:—

power to stop water-supply;

- (1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the Local Government ;
- (2) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom ;
- (3) within periods fixed from time to time by the Divisional Canal-officer :

(b.) No claim shall be made against the Government for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of the Government, or of any repairs, alterations, or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal-officer considers necessary; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorized by the Local Government:

Claims to compensation in case of failure or stoppage of supply ;

(c.) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss:

claims on account of interruption from other causes;

(d.) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year.

duration of supply;

(e.) Unless with the permission of the Superintending Canal-officer, no person entitled to use the water of any canal, or any work, building or land appertaining to any canal, shall sell or sublet or otherwise transfer his right to such use: Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant:

sale or sub-letting of right to use canal-water;

But all contracts made between Government and the owner or occupier of any immoveable property, as to the supply of canal-water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place:

(f.) No right to the use of the water of a canal shall be, or be deemed to have been, acquired under the Indian Limitation Act, 1877,* Part IV.; nor shall Government be bound to supply any person with water except in accordance with the terms of a contract in writing.

NOTES—Agreement to sell water is unenforceable 8 P. P. 1913 Rev.

PART V.

OF WATER-RATES.

33. If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified, the person on whose land such water has flowed if such land has derived benefit therefrom,

or if such person cannot be identified, or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, to the charges made for such use.

34. If water supplied through a water course be suffered to run to waste, and if, after enquiry by the Divisional Canal-officer, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the persons chargeable in respect of the water supplied through such water-course shall be jointly liable for the charges made in respect of the water so wasted.

35. All charges for the unauthorized use or waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

*The reference to Part IV. of Act IX. of 1871 is altered in accordance with Act XV. of 1877, s. 2 But now see Act IX. of 1908.

All questions under section 33 or section 34 shall be decided by the Divisional Canal-officer, subject to an appeal to the head revenue officer of the district or such other appeal as may be provided under section 75.

36. The rates to be charged for canal water supplied for purposes for irrigation to the occupiers of land shall be determined by the rules to be made by the Local Government, and such occupiers as accept the water shall pay for it accordingly.

Charge on occupier for water how determined.

A rate so charged shall be called the 'occupier's rate'.

"The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sublet their lands, or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy."*

37. In addition to the occupier's rate, a rate to be called the 'owner's rate' may be imposed, according to rules to be made by the Local Government, on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation.

38. The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land-revenue, might be assessed on such land, on account of the increase in the annual value or produce thereof caused by the canal-irrigation. And for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

39. No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land revenue at irrigation-rates, during the currency of such assessment.

Owner's rate when not chargeable.

When occupier is to pay both owner's rate and occupier's rate.

40. If such land is occupied by the owner,

or if it is occupied by a tenant whose rent is not liable to enhancement on the ground that the value of the produce of the land or the productive powers of the land has or have been increased by irrigation,

* The last paragraph of s. 36 was added by Act (XVI. of 1899,) s. 2.

such owner or tenant shall pay the owner's rate as well as the occupier's rate.

41. In the case of a tenant with a right of occupancy, the Local Government shall have power to make rules for dividing the owner's rate between such tenant and his landlord, proportionately to the extent of the beneficial interest of each in the land.

Power to make rules for apportioning owners rate.

Scope—88 P. R 1885.

42. If the owner of the land is not the occupier, but has power to enhance the rent of the occupier on the ground that the value of the produce or the productive powers of the land has or have been increased by irrigation ;

When owner is to pay owner's rate.

or if, when the amount of rent was fixed, the land irrigated from the canal.

the owner shall pay the owner's rate.

43. If a revision of settlement is a ground for entertaining a suit for the enhancement of rent, the introduction of canal-irrigation into any land shall have the same effect on the landlord's right to re-enhance the rent of a tenant with a right of occupancy of such land, as if a revision of settlement had taken place, under which the revenue payable in respect of such land had been increased.

Effect of introduction of canal-irrigation on landlord's right to enhance.

44. Where a water rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

Water-rate by whom payable when charged on land held by several owners.

*Recovery of Charges.**

45. Any sum, lawfully due under this Part, and certified by the Divisional Canal-officer to be so due, which remains unpaid after the day on which it becomes due, shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land-revenue.

Certified dues recoverable as land-revenue.

* As to the application of ss. 45 to 47 to the recovery of drainage-rates, see s. 60 *infra*.

46. The Divisional Canal-officer or the Collector may enter into an agreement with any person for the collection and payment to the Government by such person of any sum payable under this Act by a third party.

Power to contract for collection of canal dues.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work, or building in respect of which such sum is payable, or for or in which the canal-water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under section 45 ; and if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Collector from such third party.

47 The Collector may require the lambardar or person under engagement to pay the land-revenue of any estate, to collect and pay any sums payable under this Act by a third party, in respect of any land or water in such estate.

Lambardars may be required to collect canal dues

Such sums shall be recoverable by the Collector as if they were arrears of land-revenue due in respect of the defaulter's share in such estate ;

and for the purpose of collecting such sums from the subordinate zamindars, raiyats, "tenants or sub-tenants"* such lambardar or person may exercise the powers, and shall be subject to the rules laid down in the law for the time being in force, in respect to the collection by him of the rents of land or of shares of land-revenue.

The Local Government shall provide,

(a) for remunerating persons collecting sums under this section ; or

(b) for indemnifying them against expenses properly incurred by them in such collection ; or

(c) for both such purposes.

NOTES.

Lambardar is a Zamindar. 32 Ind Cas. 552.

* Fines excluded from sections 45, 46, 47.

48. Nothing in section forty-five, forty-six or forty-seven applies to fines.

* The words "tenants or sub-tenants" have been substituted for the words "tenants" by Act (XVI, of 1899), s. 3.

PART VI.
OF CANAL-NAVIGATION.

49. Any vessel entering or navigating any canal contrary to the rules made in that behalf by the Local Government, or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or both removed and detained, by the Divisional Canal-officer, or by any other person duly authorized in this behalf.

Detainer of vessels violating rules.
The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to the Government such sum as the Divisional Canal-officer, with the approval of the Superintending Canal-officer, determines to be necessary to defray the expenses of repairing such damage, or of such removal or detention, as the case may be

Liability of owners of vessels causing damage.
50. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, 1882,[†] or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

Recovery of fines for offences in navigating canals.
51. If any charge due under the provisions of this Part in respect of any vessel is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize and detain such vessel and the furniture thereof, until the charge so due together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Power to seize cargo or goods, if charges due thereon are not paid.
52. If any charge due under the provisions of this Part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal, is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

[†] The reference to Act X. of 1872 is altered in accordance with Act X. of 1882, s 3 (now see Act V. of 1898)

53. Within a reasonable time after any seizure under section 51 or section 52, the said Canal-officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will on a day to be named in the notice, but not sooner than fifteen days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

And, if such claim be not so discharged, the said Canal-officer may on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale:

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be sold than shall, as nearly as may be suffice to cover the amount due in respect of such vessel cargo or goods.

The residue of such furniture, cargo, or goods, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

54. If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal, be left unclaimed for a period of two months, the Divisional Canal-officer may take possession of the same.

The officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo, or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale after paying all tolls, charges, and expenses incurred by the Divisional Canal-officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal-officer.

If the Divisional Canal-officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the district-treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction.

PART VII.

OF DRAINAGE.

55. Whenever it appears to the Local Government that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream, or drainage-channel, such Government may, by notification published in the official Gazette,* prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Power to prohibit obstruction, or order their removal.

Thereupon so much of the said river, stream, or drainage-channel as is comprised within such limits, shall be held to be a drainage-work as defined in section 3.

56. The Divisional Canal-officer, or other person authorized by the Local Government in that behalf, may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

Power to remove obstructions after prohibition

If, within the time so fixed, such person does not comply with the order, the said Canal-officer may himself remove or modify the obstruction; and if the person to whom the order was issued, does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land-revenue.

57. Whenever it appears to the Local Government that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof,

Preparation of schemes for works of improvement.

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

the Local Government may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which the Government proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

* See *North-Western Provinces Gazette*, 2nd August, 1873, p. 938: 17th January 1884, p. 169.

58. The persons authorized by the Local Government to draw up such scheme may exercise all or any of the powers conferred on Canal-officer by section 14.

Powers of persons employed on such schemes.

59. An annual rate, in respect of such scheme, may be charged, according to rules to be made by the Local Government, on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable.

Rate on lands benefited by works.

Such rate shall be fixed as nearly as possible so as not to exceed either of the following limits :—

(1.) Six per cent. per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works, excluding the said rate :

(2.) In the case of agricultural land, the sum which, under the rules then in force for the assessment of land-revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage-work.

Such rate may be varied from time to time, within such maximum, by the Local Government.

So far as any defect to be remedied is due to any canal, water-course, road, or other work or obstruction, constructed or caused by the Local Government or by any person, a proportionate share of the cost of the drainage-works required for the remedy of the said defect shall be borne by such Government or such person as the case may be.

60. Any such drainage-rate may be collected and recovered in manner provided by sections 45, 46, and 47, for the collection and recovery of water-rates.

Recovery of rate.

61. Whenever, in pursuance of a notification made under section 55, any obstruction is removed or modified.

Disposal of claims to compensation.

or whenever any drainage-work is carried out under section 57, all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in section 10.

62. No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Limitation of such claims.

PART VIII.

OF OBTAINING LABOUR FOR CANALS AND DRAINAGE-WORKS.

63. For the purposes referred to in this Part, the word
 Definition of 'labourer.' 'labourer' includes persons who exercise any
 handicraft specified in rules to be made in
 that behalf by the Local Government.

64. In any district in which a canal or drainage-work is
 constructed, maintained, or projected by
 Government, the Local Government may,
 if it thinks fit, direct the Collector
 Power to prescribe num-
 ber of labourers to be sup-
 plied by persons benefited
 by canal,

(a) to ascertain the proprietors, sub-proprietors, or farmers,
 whose villages or estates are or will be, in the judgment of the
 Collector, benefited by such canal or drainage-work, and

(b) to set down in a list, having due regard to the circum-
 stances of the district and of the several proprietors, sub-proprietors
 or farmers, the number of labourers which shall be furnished by
 any of the said persons, jointly or severally, from any such village
 or estate, for employment on any such canal or drainage-work
 when required as hereinafter provided.

The Collector may, from time to time, add to or alter such
 list or any part thereof.

65. Whenever it appears to a Divisional Canal-officer duly
 authorized by the Local Government, that,
 unless some work is immediately executed,
 such serious damage will happen to any
 canal or drainage-work as to cause sudden
 and extensive public injury.
 Procedure for obtaining
 labour for works urgently
 required,

and that the labourers necessary for the proper execution
 thereof cannot be obtained in the ordinary manner within the time
 that can be allowed for the execution of such work so as to prevent
 such injury,

the said officer may require any person named in such list to
 furnish as many labourers (not exceeding the number which,
 according to the said list, he is liable to supply) as to the said
 officer seem necessary for the immediate execution of such work.

Every requisition so made shall be in writing, and shall state

(a) the nature and locality of the work to be done,

(b) the number of labourers to be supplied by the person upon
 whom the requisition is made, and

(c) the approximate time for which, and the day on which, the labourers will be required :

and a copy thereof shall be immediately sent to the Superintending Canal-officer for the information of the Local Government.

The Local Government shall fix, and may from time to time alter, the rates to be paid to any such labourers : provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work. In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this Part, prevented from following his ordinary occupation.

The Local Government may* direct that the provisions of this Part shall apply, either permanently or temporarily (as the case may be), to any district or part of a district for the purpose of effecting necessary annual silt-clearances, or to prevent the proper operation of a canal or drainage-work being stopped, or so much interfered with as to stop the established course of irrigation or drainage.

66. When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply, and to continue to supply, his labour for the purposes aforesaid.

Liability of labourers
under requisition.

PART IX.

OF JURISDICTION.

67. Except where herein otherwise provided, all claims against Government in respect of anything done under this Act may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal-water to any crop sown or growing at the time of such order.

Jurisdiction under this Act
of Civil Courts.

68. Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction, or maintenance of a water-course, any such person may apply in writing to the Divisional Canal-officer stating the matter in dispute. Such officer, shall thereupon give notice to the other persons interested, that, on a day to be named in such notice, he will proceed

Settlement of differences as
to mutual rights and liabilities
of persons interested in
water-course.

* Certain words after this have been omitted by Act. 4 of 1914.

to inquire into the said matter. And, after such enquiry, he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Collector who shall thereupon enquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made, and shall thereafter remain in force until set aside by the decree of a Civil Court.

69. Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the Code of Civil Procedure;* and every such inquiry shall be deemed a judicial proceeding

Powers to summon and examine witnesses.

PART X.

OF OFFENCES AND PENALTIES.

70. Whoever, without proper authority, and voluntarily, does any of the acts following, that is to say—

Offences under Act.

(1) damages, alters, enlarges, or obstructs any canal or drainage-work;

(2) interferes with, increases, or diminishes the supply of water in, or the flow of water from, through, over, or under, any canal or drainage-work;

(3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage, or render less useful any canal or drainage-work;

(4) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner;

(5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the Local Government for entering or navigating such canal;

* This reference should now be read as applying to Act V. of 1908—See s. 158 of that Act.

(7) while navigating on any canal, neglects to take proper precautions for the safety of the canal and of vessels thereon ;

(8) being liable to furnish labourers under Part VIII. of this Act, fails, without reasonable cause, to supply or to assist in supplying, the labourers required of him.

(9) being a labour liable to supply his labour under part VIII. of this Act, neglects, without reasonable cause, so to supply and to continue to supply his labour ;

(10) destroys or moves any level-mark or water-guage fixed by authority of a public servant ;

(11) passes, or causes animals or vehicles to pass, on or across any of the works, banks, or channels of a canal or drainage-work contrary to rules made under this Act, after he has been desired to desist therefrom ;

(11) violates any rule made under this Act, for breach whereof a penalty may be incurred,

shall be liable, on conviction before a Magistrate of such class as the Local Government directs in this behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month or to both.

71. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act : Provided that no person shall be punished twice for the same offence.

72. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

73. Any person in charge of or employed upon any canal or drainage work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest police-station ; to be dealt with according to law, any person who, within his view, commits any of the following offences :—

(1) wilfully damages or obstructs any canal or drainage-work ;

(2) without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any other stream, so as to endanger, damage, or render less useful any canal or drainage-work.

74. In this Part the word 'canal' shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by Government for the purposes of canals, and buildings, machinery, fences, gates, and other erections, trees, crops, plantations, or other produce, occupied by or belonging to Government, upon such lands.

OF SUBSIDIARY RULES.

75. The Local Government may from time to time, make power to make, alter, and rules to regulate the following matters:—
cancel rules

(1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;

(2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable.

(3) the persons by whom, *and** the time, place, or manner at or in which, anything for the doing of which provision is made in this Act, shall be done ;

(4) the amount of any charge made under this Act ;

(5) and generally to carry out the provisions of this Act ;

The Local Government may from time to time, alter or cancel any rules so made.

Such rules, alterations, and cancelments shall be published in the local official Gazette, and shall thereupon have the force of law
Publication of rules.

* In 75, cl (3), the word "and" has been inserted by Act XII. of 1891, Sch. II.

† Certain words after this inserted by Act 4 of 1914 have been omitted by Act 38 of 1920.

ACT X OF 1873.

The Indian Oaths Act.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH APRIL 1873.

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmation, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations; it is hereby enacted as follows:—

Preamble.

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Oaths Act 1873 :

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance

Local extent.

with Her Majesty.

NOTES

Oaths not conclusive evidence in any proceedings other than that in which it is taken. 33C. 380.

Where it is not recorded that oath was administered the presumption is that proper procedure was followed. 35A. 575.

*Act X. of 1873 has been declared in force in the Santhal Parganas by Reg. (III. of 1872), s. 3. as amended by Reg. (III of 1899), s. 1/3; in Angul and the Khondmals (with an exception) by Reg. (III of 1913), s. 3; in the Arakan Hill District (except s. 2 and the Schedule), by Reg. (I of 1916) s. 2; in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4; and in British Baluchistan by Reg. (II of 1913), s. 3.

For Statements of Objects and Reasons—See *Gazette of India*, 1873 Pt. V., p. 17; for proceedings in Council see *ibid*, 1872, Supplement, p. 889; *ibid* 1873, Supplement, pp. 3, 233, 235—246, 281, 395, and 410; *ibid*, 1873. Extra Supplement pp. 1—8.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (the District of Lohardaga then included the Palamau District, separated in 1894)

... See *Gazette of India* 1881, Pt. I, p. 504.

The North Western Provinces Tarai

Dito ... 1876, Pt. I, p. 505.

The Scheduled Districts in Ganjam and Vizagapatam, See *Fort St. George Gazette*, 1898, Pt. I., p. 666, and *Gazette of India*, 1898, p. 869.

It has been extended, under the same Act, to the Scheduled District of George.—See *Gazette of India*, 1876, Pt. I., p. 417.

2. [*Repeal of enactments.*] *Repealed by Act XII. of 1873.*

3. Nothing herein contained applies to proceedings before Courts-martial, or to oaths, affirmations, or declarations, prescribed "by or under any Instruction under the Royal Sign Manual of His Majesty or"* by any law which, under the provisions of the Indian Councils Act, 1861, the Governor-General in Council has no power to repeal.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(a) All Courts and persons having, by law or consent of parties, authority to receive evidence;

(b) The Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

NOTES

Oath can be administered in a proceeding under s. 164 of the Cr. Procedure Code, 16 M 421; 29M 89; 8 Bom. L. R. 589; 10C. P. L. R Cr. 16. (but see 2 P. R. 1893Cr) So also in an enquiry under s. 122 of the Criminal Procedure Code, 20A. 371; A. W. N. (1903) 36; An oath can also be administered in a proceeding under s. 100 of Cr. P. Code, 36 Ind. Cas. 171. But oath cannot be administered in a non judicial enquiry 35 Ind. Cas 672; 11 B H. C. R. 11.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

5. Oaths or affirmations shall be made by the following persons:—

(a) all witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons or to receive evidence;

* The words within quotations have been inverted by Act VI of 1919.

interpreters;

(b) interpreters of questions put to, and evidence given by, witnesses; and

jurors.

(c) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

NOTES.

Child—oath should be administered even to a child but where no oath has been administered and the evidence is not inadmissible 31 P. R. 1889 Cr. ; S. C. 242 Oudh ; 11 C. P. L. R. Cr. 16 : 16 M. 105 (Per Parker J.) ; 22 Ind. Cas. 737. In every case where a witness is a competent witness under s. 118 of the Evidence Act, oath should be administered. 61 Ind. Cas. 705 ; 41 C. 406.

Interpreters—The only effect of the omission of the interpreter to take the oath was to render it necessary for the prosecution to prove that the interpretation was correctly made. 13 C. W. N. 942-90. L. J. 690,

Accused—An accused is not a competent witness against his co-accused. 22 C. W. N. 405=45 C. 720.

Affirmation by natives or by persons objecting to oath.

6. Where the witness, interpreter, or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case, the witness, interpreter, or juror, shall make an oath.

NOTES.

Witnesses, interpreters, or jurors who are Hindus or Muhammadans are exempt from taking oath. 20 P. R. 1902 Cr. In every other case it is imperative that oath should be administered, 9 L. B. R. 88, 11 A. 1830. When a witness is neither affirmed nor sworn even then he can be convicted for giving false evidence. 19 C. 355.

IV.—Forms of Oaths and Affirmations.

7. All oaths and affirmations made under sections 5 shall be administered according to such forms as the High Court may from time to time prescribe.

Forms of oaths and affirmations.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.*

* This explanation to s. 7 being repealed by the Lower Burma Courts Act (No. 10 of 1900) s. 11 is here omitted.

8. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him,

Powers of Court to tender certain oaths.

NOTES.

Scope—ss. 8 to 11 do not apply to Criminal proceedings 13 B. 369; 13 Ind. Cas 215; 22 Bom. L. R. 898. These sections apply only to Civil proceedings, I Weir 822. Under this section it is not necessary that the form of oath should be specified. 23 P. R. 1887.

Court—A Local Commissioner is not a Court. 3 Ind. Cas. 621; 89 P. R. 1909. Arbitrators are also not. 4 A 283.

Affecting third party—oath repugnant to decency and affecting third person is not valid. 7 Ind. Cas. 479; But see 18 A. 46; 22 M. 234; 5 P. R. 1903; 85 P. R. 1903. A Court cannot decree a suit when the plaintiff offers to bind himself by the oath of a witness but who refuses to take oath. 81 P. R. 1888.

Withdrawal—is not ordinarily allowed, 29 A. 49; 22 B. 281; 16 Ind. Cas 733; 18 A. 46; 22 M. 234. An agreement that failure to take oath will decide the suit is not valid. 31 M. 1.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Court may ask party or witness whether he will make oath proposed by opposite party.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

NOTES.

Party—A duly authorized agent holding a special power of attorney from a party to a suit enabling him to conduct a suit in a manner he may deem fit can make an offer under this section. 38A. 131. So also a pleader specially authorized can make an offer. 14B. 455; P. R. 72 of 1874; P. J. (1890) 23; but where there is no especial authority such offer cannot be made. 75P. R. 1900. An attorney can make such an offer. 85 P. R. 1903.

Minor—The next friend of a minor plaintiff can make such an offer. P. R. 18 of 1891 (F. B). So also the guardian of a minor defendant can. 12M 483, 12M 503, 27 C. 229, 21A 25, 19A. L. J. 911.

Estoppel—A refusal to take an oath does not make an estoppel P. J. 1897 p. 72; But the Court can draw its own inference. 31 M. 1. But where both parties refuse no inference should be drawn 7 N. L. R. 50

Retraction—before taking the oath is not allowed. 1896 P.J. 347. If the party who agrees to be bound, prevents the oath from being taken the other party is entitled to have it decreed in his favour. 17 M. L. J. 99. Where

agreement proves abortive the Court can proceed on evidence already taken. 36, Ind. Cas 1001. Offer in a proceeding under S. 144 Cr. Pro. Code is not binding in a subsequent civil suit. 33 O. 386; See also 5 M. 259; 13 M. L. T 261.

Swearing with Ganges water in hand is sufficient compliance where the other party demands that. 6 A. L. J. 244.

Oaths taken in form other than proposed is not conclusive. A.W.N. 1885, 188.

10. If such party or witness agrees to make such oath or affirmation the Court may proceed to administer it; or if it is of such a nature that it may be more conveniently made out of Court the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Administration of 'oath if accepted.

NOTES.

Scope.—Agreement must specify the form of oath and the place where it should be taken. 21 M. L. J. 618. The procedure must be strictly followed. 6 Ind. Cas 604. Where the Court does not administer it personally he should issue a commission. 7 C. P. L. R. 122; see also 17 Ind. Cas. 930.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Evidence conclusive as against person offering to be bound.

NOTES.

Scope.—The evidence so given is conclusive against the party who offered to be bound by the oath. 7 C. P. L. R. 122, 49 Ind. Cas. 1005; 45 Ind. Cas. 230. But it does not, in any way, compel the Court trying the case to accept that evidence as conclusive. 14 A. 141. The expression "conclusive proof" is to be interpreted in the sense in which it is used in the Indian Evidence Act. 8 Bom L. R. 19. Evidence under this section is conclusive proof of the matter stated and of nothing else. 45 P. R. 1898. This section is not applicable where the oath is not taken under form under section 8. 22 W. R. 387.

Appeal.—Vide 13 A. 386.

Time.—When the oath was taken not at the appointed time but later, the onus lies on the person, who relies on the oath to prove that the time is not the essence of the contract. 52 Ind. Cas. 619.

Variation in the form of the oath originally proposed, when accepted by the other party is not allowed. 12 M. L. T. 613.

Form.—Evidence to be conclusive must be taken in the form suggested by the other party. 1885 A. W. N. 188.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

Procedure in case of refusal to make oath.

NOTES.

Scope.—In case of refusal the Court must note that the party was asked and he refused to make it. 7 C. P. L. R. 122.

What amounts to refusal—*Vide* 37 P. L. R. 1903.

Presumption.—Refusal by a party can give rise to presumption that his case is false 2 C. L. R. 476; but no such presumption arises in case of refusal by a party's witness. 4 N. L. R. 50,

V. *Miscellaneous.*

13. No omission to take any oath or make any affirmation, Proceedings and evidence no substitution of any one for any other of of them, and no irregularity whatever in the not invalidated by omission of oath or irregularity from in which any one of them is administered, shall invalidate any proceeding, render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of witness to state the truth.

NOTES

Child.—Evidence of a child taken without oath is admissible. 5 Bom. L. R. 551; 14 B. L. R. 294; 24 C. W. N. 767=32 C. L. J. 31; 20 Bom. L. R. 365; 38 A. 49.

Sanction to prosecute.—In case of giving false evidence, where it is not stated in the deposition that it was taken on solemn affirmation, the defect was cured by this section. 18 C. W. N. 1323.

Omission.—It converts omission whether accidental or intentional. 15 B. 359; 14 B. L. R. 294; 16 M. 105; 41 C. 406 11 C. P. L. R. 16; 16 M. 105; 14 B. L. R. 54; 2 L. B. R. 322; but see 9 L. B. R. 88; 10 A 207; 36 Ind. Cas. 468.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.*
Persons giving evidence bound to state the truth.

NOTES.

A witness must state the truth, no matter the trial may prove infructuous 19 M 375.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.
Amendment of Act XLV. of 1860, sections 178 and 181.

16. Subject to the provisions of 3 and 5, no person appointed Official oath's abolished. to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

* See Act, XLV. of 1860, s. 191.

ACT XVI OF 1873*.

The North-Western Provinces Village and Road-police Act.

RECEIVED THE G-G'S ASSENT ON THE 21ST NOVEMBER 1873.

An Act to consolidate and amend the Law relating to Village and Road-police in the North-Western Provinces.

Preamble WHEREAS it is expedient to consolidate and amend the law relating to the Village and Road police in the North Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

1. — Preliminary.

Short title 1. This Act may be called "The North-Western Provinces Village and Road-police Act, 1873,"

† This Act extends only to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces.

Local extent

[Commencement] Repealed by Act XII. of 1876.

2. [Repeal of enactments.] Repealed by Act XVI. of 1874.

II.—Appointment of Village-police.

3. The nomination to the post of village-policeman shall be made by the zamindar of the village, or where there are more zamindars than one, by the lambardar as their representative, and where there are more lambardars than one, the opinion of the majority (unless there is some special provision to the contrary in the village administration-paper) shall prevail.

Right of nomination of village-policemen.

4. Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district,

Obligation to nominate

* Act XVI. of 1873, has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the Tarai Parganas—See Notification No. 1558, dated Sep. 22. 1876, published in the *Gazette of India*, 1876, Pt. I. p. 505, and in the *North-Western Provinces Gazette*, 1876, p. 1278.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

5. The person so nominated shall, after due enquiry into his age, character, and ability, be appointed or rejected at discretion by such Magistrate, or by some officer authorized by him in that behalf.

Discretion to appoint or reject nominee

6. (a.) In default of such nomination within the said fifteen days, the Magistrate of the district shall appoint such person as he thinks fit to the vacancy.

Power to Magistrate to appoint

(b.) If the nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post; and in default of such nomination, or if such nomination has been made, but the nominee is again rejected, the Magistrate of the district shall appoint such person as he thinks fit to vacancy.

Procedure in case of rejection of nominee.

III.—Appointment of Road-police.

7. Subject to the rules to be framed under section 14 and for the time being in force the Magistrate of the district may, from time to time, appoint persons to be the road-police of this district.

Appointment of road-police.

IV.—Duties of Village and Road-police.

8. Every village policeman and every road-policeman shall perform the following duties:—

Duties of village and road policemen-

- (a) He shall give immediate information to the officer in charge of the police-station appointed for his village or beat,
- (1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar, or within his beat;
- (2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespasses, and
- (3) of all attempts and preparations to commit, and abate-ments of, any of the said offences :

- (b.) He shall keep the police informed of all disputes which are likely to lead to any riot or serious affray.
- (c) He shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in paragraph (a), clause (2) of this section
- (d) He shall observe, and from time to time report to the officer in charge of the police station within the jurisdiction of which his village or beat may be situate, the movements of all bad characters in or on such village or beat :
- (e.) He shall report to the officer in charge of such police-station the arrival of suspicious characters in the neighbourhood :
- (f.) He shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

9. Whenever a village-policeman or road-policeman arrests any person, he shall take him as soon as possible to the police station within the jurisdiction of which his village or beat is situate.

Procedure on arrest by village or road policeman

V.—Liabilities of Village and Road police.

10. The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

Dismissal of village or road-policeman

11. Every village-policeman and every road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,

Acts punishable

or withdrawing from the duties of his without permission, and without having given at least two months' notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 3 and 7 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

or violating any of the rules framed under section 14 and for the time being in force,

shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three

Penalty.

months or to both.

NOTES

A village chowkidar is not bound to give immediate information of offence not committed within the village A. W N 1886, 65 See also A W N 1882, 160.

12. All fines levied under this Act on village-policemen or road-policemen shall be credited to such fund as the Local Government from time to time appoints

Fines to be credited to such fund as Government appoints

VI — Miscellaneous.

13. All orders of, and appointments made by, the Magistrate of the district under section 5, 6, 7, or 10, shall be subject to control, revision, and alteration by the Commissioner to whom he is subordinate.

Orders of Magistrate of district subject to control of Commissioner

14. The Local Government may from time to time frame rules,

Power to make subsidiary rules.

- (a) for the discipline of the village and road-police,
- (b) for regulating their numbers, location, and duties, and
- (c) for carrying out generally the purposes of this Act,

ACT III. OF 1874.*

Married Women's Property Act.

RECEIVED THE G.-G.'S ASSENT ON THE 24TH FEBRUARY 1874.

An Act to explain and amend the law relating to certain Married Women and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter
 Preamble. appears for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day :

And whereas by the Indian Succession Act, 1865, section 4, it is enacted that no person shall by marriage acquire any interest in that property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried :

And whereas by force of the said Act all women to whose marriage it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives :

It is hereby enacted as follows :

NOTES.

Scope.—This Act applies to persons having Indian domicile as well to those having English domicile, 12 C. 522 ; 4C. 140.

It is competent for married woman, to charge property settled on her without power of anticipation, with post-nuptial debts 11B, 348.

* Act III. of 1874 has been declared, under the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan, in the District of Singbhum.—See *Gazette of India* 1881, Pt. I, p. 504.

It has been extended, under the same Act, to the Scheduled District of the North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. 1, p. 505.

It has been declared in force in the Santhal Parganas by Reg. (III. of 1872) s. 3, as amended by Reg. (III. of 1899), s. 3, in the Arakan Hill District by Reg. (IX. of 1874), s. 3: in Upper Burma (except the Shan States) by Act (XIII. of 1898), s. 4,

This Act does not apply to the Hindus. 37B. 471; 35M. 162; 20 C. L. J. 44=18 C. W. N. 1335; but see 25 M. L. J. 65 (F. B.) where it was held that ss. 4, 5, 7, 8 and 9 are inapplicable to Hindus but s. 6 is rendered applicable by s. 2. But in 20 C. L. J. 144, Mr. Justice Richardson observed that the extent to which Hindus, Mahomedans and Buddhists are affected or excluded, depends on the especial clauses relating to them and not on the power given to the Governor-General in Council by s. 2 in regard to other communities.

I.—Preliminary.

Short title.

1. This Act may be called "The Married Women's Property Act, 1874 :"

2. It extends to the whole of British India, and, so far as regards subjects of her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman, who, at the time of her marriage, professed the Hindu, Muhammadan, Buddhist, Sikh, or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the "Local Government"* may, from time to time, by order, either retrospectively from the passing of this Act, or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect, or tribe, or part of a race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply such provision.

The "Local Government"* may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the "Local official Gazette"

The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed, at the time of the marriage, the Hindu, Muhammadan, Buddhist, Sikh, or Jaina religion.

3. [*Repealed by Act XII. of 1876.*]

II.—Married Women's Wages and Earnings.

4.† The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation, or trade, carried on by her, and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all savings from, and investments of, such wages, earnings, and property,

* The words within quotations have been inserted by Act 38 of 1920.

† Compare 33 and 34 Vict., c. 93 s. 1, which was repealed by 45 and 46 Vict. c. 75, s. 22.

shall be deemed to be her separate property, and their receipts alone shall be good discharges for such wages, earnings, and property.

III—Insurances by Wives and Husbands.

5.† Any married woman may effect a policy of insurance on her own behalf and independently of her husband, and the same and all benefit thereof, if expressed on the face of it to be so effected shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

6.‡ A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act No. XVII. of 1864 (*to constitute an office of Official Trustee*), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

NOTES.

Hindus.—This section does not apply to the Hindus. The insurance policy of a deceased Hindu for the benefit of his wife can be attached and sold by a deceased husband's creditor. 37B 47=15 Bom. L. R. 320. The reference

† Compare 33 and 34 Vict., c. 93 s. 10, para 1.

‡ Compare 33 and 34 Vict., c. 93 s. 10, para 2.

§ The words within quotations have been substituted by Act 35 of 1920,

to children in s. 6 is incidental and is applicable only to children of persons who are governed by the rest of the Act. 18 C. W. N. 1335=20 C. L. J. 44. But a Full Bench of the Madras High Court has held that this section is applicable to all insurance policies. 25 M. L. J. 65 (F.B.) See also 32 Ind. Cas. 991.

IV.—Legal Proceedings by and against Married Women.

7.* A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865, or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes, and orders in respect of such property as she would be liable to if she were unmarried.

Married women may take legal Proceedings

NOTES.

Vide.—10 285.

8. If a married woman (whether married before or after the first day of January 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract, and continued unmarried at the execution of the decree †

Wife's liability for post-nuptial debts.

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied ‡

NOTES.

The Act is intended to include separate property of a married woman subject to a restraint upon anticipation. 120. 522; 11 B. 348; 30 M. 378; 18 M. 19.

Husband is not a necessary party in a suit against her separate property where marriage took place before 1865. 10 C. L. R. 536. See also 8 B. L. R. 372.

* Compare 33 and 34 Vict., c. 93, s. 11.

† See the Indian Succession Act. 1865, s. 331,

‡ The words "or render a married woman liable to arrest or to imprisonment in execution of a decree" being repealed by Debtors Act (VI. of 1888) are omitted.

V.—Husband's Liability for Wife's Debt.

9.* A husband married after the thirty-first day of December 1865 shall not, by reason only of such marriage, be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried.

Provided that nothing contained in this section shall† invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

* Compare 33 and 34 Vict., c. 93, s. 12.

† Here certain words repealed by Act XII. of 1891, have been omitted.

ACT IV. OF 1874.***The Foreign Recruiting Act.**

RECEIVED THE G.-G.'S ASSENT ON THE 24TH FEBRUARY, 1874.

An Act to control recruiting in British India for the service of Foreign States.

Preamble. WHEREAS it is expedient that the Governor-General in Council should exercise full control over recruiting in British India for the service of Foreign States ; It is hereby enacted as follows :—

Short title.

1. This Act may be called. "The Foreign Recruiting Act, 1874."

Local extent.

It extends to the whole of British India.

Commencement.

[*Repealed by Act XII. of 1876.*]

2. In this Act—

"Foreign State" includes any person or persons exercising, or assuming to exercise, the powers of Government in or over any country, colony, province, or people beyond the limits of British India.

3. If any person is, within the limits of British India, obtaining, or attempting to obtain recruits for the service of any Foreign State in any capacity, the Governor-General in Council, may by order in writing signed by a Secretary to the Government of India, either prohibit such person from so doing, or permit him to do so, subject to any conditions which the Governor-General in Council thinks fit to impose.

* Act IV, of 1874 has been declared in force in the Arakan Hill District by Reg. (IX. of 1874), s. 3 ; in Upper Burma (except Shan States) by Act (XIII. of 1898) s. 4 ; and in British Baluchistan by (Reg (II of 1913, s. 3.

It has been declared under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts ; The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I. p. 504.

It has been extended under the same Act to the Scheduled District of the North-Western Provinces Tarai.—See *Gazette of India*, 1876 Pt. I. p. 505.

The Foreign Enlistment Act (33 & 34 Vict., c. 90) applies only when the recruiting is for the service of any foreign State at war with any foreign State at peace with Her Majesty.

4. The Governor-General in Council may from time to time, by general order notified in the Gazette of India, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which he thinks fit.

Power to impose conditions.

5. The Governor-General in Council may rescind or vary any order made under this Act in such manner as he thinks fit.

Power to rescind or vary orders.

6. Whoever, in violation of the prohibition of the Governor-General in Council, or of any condition subject to which permission to recruit may have been accorded.

Offences.

(a) induces or attempts to induce any person to accept, or agree to accept, or to proceed to any place with a view to obtaining, any commission or employment in the service of any Foreign State, or

(b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever.

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

7. Any offence against this Act may be enquired into and tried, as well in any district in which the person accused may be found as in any district in which it might be enquired into and tried under the provisions of the Code of Criminal Procedure.*

Place of trial.

* See Act V of 1898.

ACT IX OF 1874.*

The European Vagrancy Act.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH APRIL 1874.

An Act to consolidate and amend the law relating to European Vagrancy.

Preamble. Whereas it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows:

PART I.

PRELIMINARY.

Short title. 1. This Act may be called "The European Vagrancy Act, 1874;

Local extent, It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement. And it shall come into force at once: Provided that sections 4 to 16 (both inclusive), 19, 20, 24, and 29, shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship, or Chief Commissionership in British India, until such day or respective days "as in the case of Coorg

* For Statement of Objects and Reasons., see *Gazette of India*, 1873, Pt. V., p. 399; for proceedings in Council, see *ibid.*, 1874, Extra Supplement, August 23, pp 10 and 14; *ibid.*, 1874, Supplement, pp. 323 and 412.

Act IX. of 1874 has been declared in force in the Santhal Parganas by Reg. (III, of 1872), s. 3, as amended by Reg. (III, of 1899), s. 3, in Angul and Khondmals by Reg. (III of 1913), s. 3; in the Arakan Hill District by Reg. (1 of 1916), s. 2, in Upper Burma (except Shan States) by Act (XIII. of 1898), s. 4; in British Baluchistan by Reg. (II of 1913) s. 3;

It has been declared under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum. (The Lohardaga District included at this time the present District of Palamau which was separated in 1894).—See *Gazette of India*, 1881, Pt. I., p. 504.

It has been extended, under the same Act, to the Scheduled District of the North-Western Province Tarai, =See *Gazette of India*, 1876, Pt. I., p. 505.

and the said Islands the Local Government by notification in the local official Gazette, and in the case of any of the said dominions, the Governor General in council by notification in the Gazette of India, from time to time appoints in this behalf.”*

“Provided further that in the case of any of the said dominions which is within the political charge of a Local Government the power conferred on the Governor-General in Council by this section shall be exercised by the Local Government by notification in the local official Gazette.”†

2. Acts No XXI. of 1869 (*to provide against European Vagrancy*) and No. XXVIII. of 1871 (*to amend the European Vagrancy Act, 1869*) are hereby repealed.

Repeal of Acts

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed, and exemptions granted under the former Act shall be deemed to have been respectively made, provided, given, conferred, prescribed, and granted under this Act.

Interpretation-clause.

3. In this Act—

“Person of European extraction.”

“Persons of European extraction” includes—

(a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony ;

(b) the sons and grandsons of such persons ;

but does not include commonly called Eurasians or East Indians :

“Vagrant” means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence :

“Master of a ship.”

“Master of a ship” includes any person in charge of a decked vessel :

And in Parts III, and V. of this Act “Magistrate” means within the limits of the towns of Calcutta Madras, and Bombay, a Presidency Magistrate,‡ and, outside those limits, a person exercising powers under the Code of Criminal Procedure‡ not less than those of a Magistrate of the second class.

* The words within quotations have been substituted by Act 38 of 1920.

† The proviso to s. 1 has been added by Act 38 of 1920.

‡ See Act V. of 1898.

PART II.

PROCEDURE.

4. Any police-officer may, within the limits of the towns of Calcutta, Madras, and Bombay, require any person who is apparently a vagrant to accompany him or any other police-officer to, and to appear before, the nearest Presidency Magistrate,* and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.*

Power to require apparent
Vagrant to go before Magis-
trate

5. The Presidency Magistrate* or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and, if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Summary inquiry into va-
grant's circumstances.

Declaration of vagrancy.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect.

Order to go to work-
house.

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the police for retaining him in their charge where he is on his way to the work-house, and to the Governor of the work-house for receiving and detaining such vagrant.

6. Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section 1) in any place subject to any adjacent Local Government, such officer may, in his discretion, forward the vagrant to such place in charge of the police, and draw up an order to that effect.

Forwarding vagrant to
place of employment.

* See Act V. of 1898.

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Presidency Magistrate* or Justice of the peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Assistance to obtain employment.

Such officer shall thereupon, to be best of his ability, assist the vagrant in seeking employment, and may, in the meantime, if he think fit, keep the vagrant in the charge of the police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by section 5.

8. Every person while in charge of the police, whether before inquiry as to his vagrancy, or while he is on his way, under section 5 to the work-house, or, under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

Subsistence-allowance.

The Presidency Magistrate* or Justice before whom any vagrant is taken under section 7 may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment,

The Local Government shall cause such allowance to be paid out of such funds at its disposal, and in such manner, as it may, from time to time, direct.

9. Any Presidency Magistrate* or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand, stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections 4, 5, 6 and 7, shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in section 4, 5, 6, and 7 shall apply to such person within such limits as aforesaid.

Power to give certificates.

* See Act V of 1898.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

Form of certificates.

10. The Local Government may, from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police, with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8, and 9.

PART III.

GOVERNMENT WORK-HOUSES.

11. The Local Government,* may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants;

Provisions of Government work-houses.

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building, not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work house under this Act.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Scale of diet.

12. Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the local Government.

Superintendence of work-houses.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

* Here certain words repealed by Act 4 of 1914 have been omitted.

13. Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages, and other effects shall be inspected, and may direct that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expenses of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

14. Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may, from time to time, be prescribed by the Local Government *

The Local Government may authorize any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys and neglects any such rule with any one of the following punishments (namely):—

(a) solitary confinement within the work house for any time not exceeding seven days ;

(b) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe.

(c) hard labour for any time not exceeding seven days ;

(d) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days ;

or, in lieu of any such punishment, any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months

15. The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

* * Here certain words substituted by Act 4 of 1914 have been omitted by Act 38 of 1920.

PART IV.

REMOVAL FROM INDIA.

16. If, after the lapse of a reasonable time, no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government.

Removal of vagrants

Cost of removal

or it may cause sections 23 and 30 to be read to him, and may then release him.

17. Any vagrant¹ or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council binding himself—

Agreements with vagrants

(a) to proceed to such port in British India as shall be mentioned in the agreement :

(b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council ;

(c) to remain on board such ship until she has arrived at her port of destination ; and

(d) not to return to India until five years have elapsed from the date of such embarkation,

Every such agreement* shall be in the form set forth in the second schedule to this Act annexed, or as near thereto if circumstances admit.

Form of agreements,

18. The Local Government of the territories in which the said port is situate may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council,

Power to perform agreement.

* Certain words, which were repealed by Act I. of 1879 have been omitted. That Act exempts these agreements from stamp-duty.—See Sch. II, No. 2, cl. (f)

PART V,

PENALTIES

19. Any person refusing or failing to accompany a police-officer to, or to appear before, a Presidency Magistrate † or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

And any person, who, when required under section 4 to accompany a police-officer to, or to appear before, a Presidency Magistrate* or Justice of the Peace, commits an offence punishable under section 353 of Indian Penal Code, may, whether he be or not a European British subject, be tried by a Magistrate for such offence.

20. Any vagrant who escapes from the police while committed to their charge under the order specified in section 5 and 6,

or who leaves a work-house, under this Act, without permission from the Governor,

or, who, having, with such permission left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence, be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

or refusing to embark when directed so to do under the same section,

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall, for every such offence, be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the Secretary of State for India, shall, for every such offence, be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Returning to India.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

24. Every person imprisoned under section 19, 20, 21, 22, 23, shall, at the end of his term of imprisonment be placed before the nearest Presidency Magistrate* or Justice of the Peace exercising powers as aforesaid who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

Procedure on close of imprisonment.

The order of transmission shall certify the fact of the previous conviction,

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees,

Penalty on ship-master bringing European convicts to India.

† See Act V. of 1898.

and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months.

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

The Governor-General in Council may, from time to time, by notification in the Gazette of India, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor General in Council seems fit, and either in respect of all or of any of the persons on board such ships,*

The Governor-General in Council may, in like manner, revoke any exemption made under this section.

26† All fines recovered under this Act shall be paid to the credit of the "Governor, Lieutenant-Governor, or Chief Commissioner of the Province concerned"‡ or as the "Local Government"‡ from time to time directs,

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.

28. In imposing penalties under this Part and Part III. of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure§ in the case of offenders not being European British subjects.

29. No proceeding under this Act shall be deemed invalid by reason only that the Presidency Magistrate§ or Justice before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24, was not the nearest.

* *Gazette of India*, 22nd October 1870, p. 723.

† Certain words before this have been omitted by Act 10 of 1914.

‡ The words within quotations have been substituted by Act 28 of 1920.

§ See Act V. of 1898.

PART VI.

MISCELLANEOUS.

30. Any European British subject who, upon the summary enquiry mentioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure* (other than those contained in Chapter VIII.* of the same Code) applicable to a European not being a British subject.

Deprivation of privileges of European British subject under Criminal Procedure Code.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section :

Save as aforesaid, nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

31. Whenever any person of European extraction lands in India, or, being a non-commissioned officer or soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association, or body of persons in any capacity,

Liability of importers of Europeans or employer of soldiers becoming vagrant

and whenever a sailor of European extraction, not being a British subject, is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is, at the date of the discharge, the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into, with the Secretary of State for India in Council, by the person, Company, Association, body, owner, or agent chargeable.

Recovery of charges.

* See Act V. of 1898.

32. When any person of European extraction lands in India, being or having been, during his passage to India, or from one Indian port to another, in charge of, or in attendance upon any animal, and becomes chargeable to the State as a vagrant, within one year after his arrival in India then

the consignee of such animal,
or the agents in India for the sale of such animal,
or, if such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned,
shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

For the purposes of this section 'consignee' includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

'Agent' defined. 'Agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *prima-facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be, and that he was at the date of the declaration, a vagrant.

34. The powers and duties conferred and imposed by sections 16 and 18 on a Local Government may be exercised and performed by such class of officers as the Local Government, from time to time, by notification in the official Gazette, appoints in this behalf.*

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and police-officers, respectively, may, in places beyond the limits of British India, be exercised and performed by such persons respectively as

* See *N.-W. Provinces Gazette*, 10th July 1875, p. 927.

the Governor General in Council, from time to time, by notification in the Gazette of India, appoints in this behalf. "Provided that, in the case of such place which is within the political charge of a Local Government, the power conferred on the Governor-General in Council by this section shall be exercised by that Local Government by notification in the local official Gazette."*

36. The "Local Government"† may, from time to time, make rules consistent with this Act for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the "Local official Gazette" and shall thereupon have the force of law.

THE FIRST SCHEDULE.

(See section 9.)

WHEREAS *E F*, of , a person of European extraction and holder of this certificate, has appeared before me, and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THERE ARE TO CERTIFY that for the space of months from the date hereof and within the Province [or District] of , nothing in sections 4, 5, 6, and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, in WHICH CASE this certificate shall be void.

Dated this day of 18.

(Signed) G. H.,

Presidency Magistrate§ for the Town of or Justice of the Peace for exercising the powers of a Magistrate of the class.

THE SECOND SCHEDULE.

(See section 17.)

ARTICLES OF AGREEMENT made this day of 18, BETWEEN the Secretary of State for India in Council of the one part, and *C. D.* of &c. [*the vagrant* of the other part : Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows :—

1. The said *C D* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C D* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

* The proviso to s. 35 has been added by Act 38 of 1920.

† Here certain words substituted by Act IV of 1914 have been omitted.

‡ Here certain words have been substituted by Act IV of 1914.

§ See Act V. of 1898.

3. The said *C D* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C D* shall not return to India until five years shall have elapsed, from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C D* to the said port; and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract, with the owner of the said ship or his agent, for the passage of the said *C D* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A B* (by order of the Governor General of India in Council [*or* the Governor in Council, *or* the Lieutenant-Governor of *or* the Chief Commissioner of], on behalf of the said Secretary of State in Council), and the said *C D* have hereunto set their hands the day and year first above written.

ACT XII. OF 1874.

The Sylhet Act 1874*

RECEIVED THE G. G.'S ASSENT ON THE 2ND SEPTEMBER 1874.

An Act to provide for the exercise, in Sylhet, of the Powers of the Lieutenant-Governor and Board of Revenue of Bengal.

WHEREAS the District of Sylhet is about to be transferred from the Lieutenant-Governorship of Bengal to the Chief Commissionership of Assam, and it is therefore necessary to provide for the exercise, within the said District, of the powers now vested in, or exercisable by, the Lieutenant Governor of Bengal and the Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal, respectively ; It is hereby enacted as follows :—

1. All powers over the whole or any portion of the said District, which, at the time of the said transfer, are, under, or by virtue of, any law or regulation, vested in, or exercisable by, the said Lieutenant-Governor or Board of Revenue, shall, on the said transfer, become vested in the Governor-General in Council.

Powers of Lieutenant-Governor and Board in Sylhet transferred to Governor-General in Council.

2. The Governor-General in Council may, from time to time, delegate to the Chief Commissioner of Assam all or any of the said powers, and withdraw any powers so delegated.

Delegation of such powers

* The Short Title has been given by the Repealing and Amending Act (V. of 1897), s. 4.

ACT XIV. OF 1874.*

The Scheduled Districts Act, 1874.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH DECEMBER 1874.

An Act to ascertain the Enactments in force in various parts of British India, and for other purposes.

WHEREAS various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature ;

* Act XIV. of 1874 has been declared in force in the Arakan Hill District (except s. 10) by Reg. (IX of 1874), s. 3, as amended by Act (XIII. of 1898), s. 16, in Upper Burma (except Shan States) by Act (XIII. of 1898), s. 4; in British Baluchistan by Reg. (II. of 1913); and in Angul and Khondmals by Reg. (3 of 1913) s. 3; in the Arakan Hill Districts by Reg. I of 1916.

The Act has been declared, under s. 3, to be in force in the following Scheduled Districts :—

The Taluqs of Bhadrachalam and Rakapilli and the Rampa Country . See *Gazette of India*. 1879, Pt. I., p. 437.

The remaining Scheduled Districts of Madras as existing, on the 19th February 1889 ... Ditto ... 1889, Pt. I., p. 151.

The villages in the Godavari District to which the provisions of 33 Viet. c. 3, s. 1, were made applicable ... Ditto ... 1893, Pt. I., p. 516.

Sindh ... Ditto ... 1877, Pt. I., p. 578.

Aden ... Ditto ... 1879, Pt. I., p. 434.

The villages belonging to the following Mehwasai Chiefs :—

(1) the Parvi of Kathi	}	Ditto	... 1879, Pt. I., p. 106.
(2) " " of Nal			
(3) " " of Singpur			
(4) " Wavi of Gaohalli			
(5) " Wassawa of Chikli			
(6) " Parvi of Nawalpur			

The Island of Perim ... Ditto ... 1886, Pt. I., p. 86.

The Territory of Peint... Ditto ... 1887, Pt. I., p. 144.

The Western Dvars ... Ditto ... 1875, Pt. I., p. 497.

The Districts of Jalpaiguri and Darjeeling, except the Western Dvars Ditto ... Extraordinary Nov. 14, 1877.

The Districts of Hazaribagh, Lohardanga, and Manbhum, and Pargana Dhalbhum in the District of Singbhum ... Ditto ... Extraordinary Nov. 14, 1877.

The Kolhan in the District of Singbhum ... Ditto ... 1881, Pt. I., p. 504.

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts ;

And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein ;

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satna and the eastern boundary of the Jabalpur Division ;—

It is hereby enacted as follows :—

NOTES.

This Act applies to Santhal Pargannas, 18 C. W. N. 994.

Short title. 1. This Act may be called "The Scheduled Districts Act, 1874 ;"

Local extent. This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule here-to annexed, and it

The Estate of Porahat, in the District of Singbhum ...	Ditto	... 1895, Pt. I., p. 685.
The Mahal of Angul ...	Ditto	... Extraordinary Nov. 14, 1877.
The Kumaon and Garhwal Districts*	Ditto	... 1876, Pt. I., p. 605.
The North-Western Provinces Tarai*	Ditto	... 1876, Pt. I., p. 605.
The scheduled portion of the Mirzapur District	Ditto	... 1879, Pt. I., p. 383.
Jaunsar Bawar	Ditto	... 1879, Pt. I., p. 381.
The Districts of Hazara, Peshawar Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Laharl, and Spiti	Ditto	... 1877, Pt. I., p. 562
The Scheduled Districts of the Central Provinces	See <i>Gazette of India</i>	1878, Pt. I., p. 266.
Coorg	Ditto	... 1875, Pt. I., p. 95.
The Andaman and Nicobar Islands	Ditto	... 1878, Pt. I., p. 132.
Ajmere and Merwara	Ditto	... 1877, Pt. I., p. 605.
Assam	Ditto	... 1877, Pt. I., p. 662.
The Lushai Hills, and the Rutton Pinya's Villages, including Demagiri, in the Chittagong Hill tracts...	Ditto	... 1898, Pt. I., p. 345.
The Pargana of Manpur	Ditto	... 1887, Pt. I., p. 167.
The Hill tracts of Arakan, in Lower Burma	Ditto	... 1889, Pt. I., p. 450.
Upper Burma, except the Shan States	Ditto	... 1886, Pt. I., p. 664.
British Baluchistan	Ditto	... 1887, Pt. I., p. 612.

* The Scheduled Districts Act itself has not been expressly declared in force in Kumaon, Garhwal, or the North-Western Provinces Tarai but it has been brought into force in these places by the issue of notifications, under s. 3, declaring other enactments in force.

shall come into force in each of the Scheduled Districts on the issue of a notification under section 3 relating to such District.

In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed; and, from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory to which the Secretary of State for India, by resolution in Council, may declare the provisions of the thirty third of Victoria, chapter III, section 1, to be applicable.*

* 33 Vict. c. 3, s. 1, has been declared applicable to the following places from the dates specified against each :—

Madras.—In the Godavari District—(1) the unsettled Government villages in the Yernaguden taluq; (2) the villages of the ex-Mansab of Jaddengi; and (3) the following petty proprietary estates, namely, Bayanagudem, Billamilli, Jangamreddigudem, Gutala, Gangolmi Pateshim, Polavaram, Petta, Dangengi, Viravaram; and Davipatnam from May 8, 1883—See *Gazette of India*, 1883, Pt. 1, p. 265 :

Bombay.—The Districts of Kohistan, Johi, Nasirabad, Sujawal, Sihwan, Kakkar, Kamar, Jacobabad, Thul, and Kasur (bordering on the frontier of Sindh, from Mithee on the Indus to the sea west of Karachi), from Jan. 1, 1873.—See *Bombay Government Gazette*, 1872, Pt. 1., p. 1225.

The Peint territory from July 14, 1885—See *Gazette of India*, 1885, Pt. 1., p. 518.

The Island of Perim, from Sep. 10, 1884—See *Gazette of India* 1887, Pt. 1., p. 239.

Aden, from Sep. 30, 1885.—See *Gazette of India*, 1885, Pt. 1., p. 675.

Bengal.—The Santal Parganas, from March 15, 1872.—See *Gazette of India* 1872, Pt. 1, p. 240.

The Chittagong Hills, from Jan. 1873—See *Gazette of India*, 1872, Pt. 1., p. 1157,

North-Western Provinces.—The Parganas of Kashipur and Jaspur in the Tarai District, from July 1, 1873.—See *Gazette of India*, 1873, Pt. 1., p. 540.

Tappa Chaurasi in the Mirzapur District, from Feb. 1, 1874.—See *Gazette of India*, 1874, Pt. 1, p. 133.

The Parganas of Bazpur, Rudarpur, Gadarpur, Kilpui, Nanak-Mattha and Bilheri, in the Tarai District, from April 1, 1874.—See *Gazette of India*, 1874, Pt. 1, p. 149.

Punjab.—The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan, and the Pargana of Spiti, from Oct. 6. 1870.—See *Gazette of India*, 1870, Pt. 1, p. 799.

Coorg.—From Oct. 1, 1877.—See *Gazette of India*, 1877, Pt. 1., p. 562.

Andaman and Nicobar Islands.—The territories under the Government of the Chief Commissioner of the Andaman and Nicobar Island, that is to say (1) the group of Islands known as the Great and Little Andamans and the Little Cocos, with their dependencies; and (2) the Island of Nanowry, together with all others commonly known as the Nicobar Islands, that is to say, the Islands of Car Nicobar and Great Nicobar, with those lying between them, including Tillau-chong, from July 15, 1872.—See *Gazette of India*, 1872, Pt. 1., p. 730.

Repeal of enactments.
repealed.

2. The enactments mentioned in the second schedule hereto annexed shall be

3. The Local Government* may from time to time, by notification * in the local Gazette (if any),—
Notification of enactments
in force in Scheduled Dis-
tricts

- (a) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such District;
- (b) declare of any enactment that it is not actually in force in any of the said Districts or in any part of any such District ;
- (c) correct any mistake of fact in any notification issued under this section :

Provided that a declaration once made under clause (a) or clause (b) of this section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section.

NOTES.

This Act comes into force by virtue of notification. 13M 353, 10B 274.

4. On the issue, under section 3, of a notification declaring what enactments are in force, or not in force in any Scheduled District, the enactments so notified shall be deemed to be in force or not in force, according to the tenor of the notification, in such District, and every such notification shall be binding on all Courts of law.

5. The Local Government† may, from time time, by notification † in the local Gazette (if any), extend to any of the Scheduled Districts, or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension.
Power to extend enact-
ments to Scheduled Dis-
tricts.

Ajmere and Merwara. From March 16, 1871.—See *Gazette of India*, 1871, Pt. I, p. 398.

Assam.—The Districts of Kamrup, Darrang, Nagaong, Sibsagar, Lakhimpur, Garo Hills, Khasia and Jaintia Hills Naga Hills and Kachar, from Jan. 1, 1873.—See *Gazette of India*, 1872, Pt. I., p. 1157.

The District of Silhat, from Aug. 1, 1874.—See *Gazette of India*, 1874, Pt. I., p. 395.

Burma.—The Hill Districts of Arakan, from Oct. 5, 1871.—See *Gazette of India*, 1871, Pt. I, p. 985.

Upper Burma (with the exception of the Shan States), from March 1, 1886.—See *Gazette of India*, 1886, Pt. I., p. 311.

* Certain words alter this repealed by Act 33 of 1920 have been omitted.

5A.* In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government † may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit—

Modification of enactments in their application to Scheduled Districts.

Appointment of officers and regulation of their procedure.

6. The Local Government may from time to time—

- (a) appoint officers to administer civil and criminal justice, and to superintend the settlement and collection of the public revenue and all matters relating to rent, and otherwise to conduct the administration within the Scheduled Districts.
- (b) regulate the procedure of the officers so appointed ; but not so as to restrict the operation of any enactment for the time being in force in any of the said Districts,
- (c) direct by what authority any jurisdiction, powers, or duties incident to the operation of any enactment for the time being in force in such District shall be exercised or performed.

NOTES

Appoint—The government can make appointment 10 B. 274

Rules—vide 22 A 405 ; 28 M. 404 ; A. W. N. 1892 ; 26 C. 874

7. All rules heretofore prescribed by the Governor-General in Council or the Local Government for the guidance of officer appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6 and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor-General in Council or the Local Government, as the case may be, otherwise directs.

All existing officers so appointed previous to the date on which this Act comes into force in such District shall be deemed to have been appointed hereunder.

* S. 5A has been inserted by Act XII, of 1901, Sch. II.
 † Certain words after this repealed by Act 88 of 1920 have been omitted.

8. Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the Local Government or (where the said District and the other territory are not subject to the same Local Government) as the Governor-General in Council from time to time appoints may consider and determine such line of boundary ;

and the order made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all Courts of Justice.

9. Any person liable to be imprisoned or to be transported beyond sea, under any order or sentence passed by any officer appointed under section 6, may (subject to such rules as the Governor-General in Council may, from time to time, prescribe in this behalf) be imprisoned in such jail, or transported to such place, as the Local Government directs.

10. Acts Na. III. of 1867* are hereby declared to be in force in the tract of land ceded to the British Government in the year 1863, and lying between the Railway Station at Satna and the eastern boundary of the Jabalpur District.

Extension to Satna strip of Acts relating to public gambling, pandhari-tax, and salt.

Saving of criminal jurisdiction over European British subjects.

11. Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed—

(a) to affect the criminal jurisdiction of any Court over European British subjects, or

(b) to affect any law other than laws contained in Act or Regulations, or in rules made in exercise of powers conferred by such Acts or Regulations.

* In s 10, the words, "and No. XXV of 1869" repealed by Act XII. of 1891, Sch. I., have here been omitted. The words "and No. XIV. of 1867" being repealed by Act (VI. of 1902) have here been omitted.

THE FIRST SCHEDULE.

(See section 1.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—*In Ganjam.*

- (1.) The Gumsur Maliahs, including Chokupad.
- (2.) The Surada Maliahs,
- (3.) The Chinna Kimedi Maliahs
- (4.) The Pedda Kimedi Maliahs.
- (5.) The Bodaguda Maliahs.
- (6.) The Surangi Maliahs.
- (7.) The Parla Kimedi Maliahs
- (8.) The Muttas of Korada and Ronaba (otherwise called Srikurma).
- (9.) [*Repealed by Act XII. of 1891.*]
- (10.) The Jurada Maliah.
- (11.) The Jalandra Maliah.
- (12.) The Mandasa Maliah.
- (13.) The Budarasinghi Maliah.
- (14.) The Kuttingia Maliah.

II.—*In Vizagapatam.*

- (1.) The Joypur Zamindari.
- (2.) Golconda Hills, west of the River Boderu.
- (3.) The Madugol Maliahs.
- (4.) The Kasipur Zamindari.
- (5.) The Panchipenta Maliahs.
- (6.) Mondemkolla, in the Merangi Zamindari.
- (7.) The Konda Muttas of Merangi.*
- (8.) The Gumma and Konda Muttas of Kurpam.
- (9.) The Kottam, Ram and Konda Muttas of Palkonda.

III.—*In the Godavari District †*

- (1.) The Bhadrachalam Taluq.
- (2.) Rakapilli Taluq
- (3.) The Rampa Country.

IV.—*In the Indian Ocean.*

The Laccadive Islands, including Minicoy.

* The word "Marangi" has been substituted for the word "Balgám" by Act XII. of 1891, Sch. I.

† The Ducharti and Guditeru Muttas in the Golconda Hills have been transferred from the Vizagapatam to the Godavari District.—See *Port St. George Gazette*, July 5, 1891, Pt. 1, p. 336 For additional Scheduled Districts in the Godavari District, see foot-note on p. 1105, *supra*.

PART II.

SCHEDULED DISTRICTS, BOMBAY.*

- I.—The Province of Sindh.
- II.—†
- III.—Aden.
- IV.—The Villages belonging to the following Mehwasai Chiefs :—
 - (1.) The Parvi of Kathi.
 - (2.) The Parvi of Nal.
 - (3.) The Parvi of Singpur.
 - (4.) Walvi of Gaohalli.
 - (5.) The Wassawa of Chikhli.
 - (6.) The Parvi of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

- I.—The Jalpaiguri and Darjeeling Districts.‡
- II.—The Hill Tracts of Chittagong.
- III.—The Santhal Parganas.
- IV.—The Chutia Nagpur Division.§
- V.—The Mahal of Angul.||

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

- I.—*
- II.—The Province of Kumaon and Garhwal.
- III.—The Terai Parganas, comprising Bazpur, Kashipur, Jaspur, Rudarpur, Gadarpur, Kilpuri, Nanak-Mattha and Bilheri.
- IV.—In the Mirzapur District—
 - (1.) The Tappas of Agori Khas and South Kon in the Pargana of Agori.
 - (2.) The tappa of British Singrauli in the Pargana of Singrauli.

* For additional Scheduled Districts in Bombay, see foot-note on p. 1105, *supra*.

† The words, "The Panch Mahals," which were originally included in the Schedule, have been omitted, as they were repealed by Act VII. of 1885, s. 4

‡ The word, "Districts" has been substituted for the word "Divisions" by Act XII. of 1891. Sch. II.

§ The Thanas of Raipur and Khattra ceased to form part of the Scheduled District of Chutia Nagpur on their transfer from the Manbhum to the Bankura District of Oct. 1. 1879.

|| See Act XXV. of 1881 s. 4, which removes the Mahal of Banki from the list of Scheduled Districts. Previous to April 1, 1882, the Mahal of Banki was united with the Mahal of Angul in one Scheduled District

* The words, "The Jhansi Division, comprising the Districts of Jhansi, Jalaun, and Lalatpur," repealed by Act XX. of 1890, have been omitted.

- (3.) The tappas of Phulwa, Dudhi, and Barha in the Pargana of Bichipar.
 (4.) The portion lying to the South of the Kaimor Range.

V.—*

VI.—The tract of country known as Jaunsar Bawar in the Dehra Doo District.

PART V.

SCHEDULED DISTRICTS, PUNJAB

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul and Spiti.

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chhattisgarh Zamindaris, viz. —

- | | |
|---------------------|-------------------|
| 1. Khariai. | 13. Matin. |
| 2. Bindra Nawagarh. | 14. Uproda. |
| 3. Sahezipur | 15. Kendu. |
| 4. Gandai. | 16. Lapha. |
| 5. Silheti. | 17. Chhuri. |
| 6. Barbaspur. | 18. Korba. |
| 7. Thakurtola. | 19. Chapa. |
| 8. Lohara. | 20. Bora Sambhal. |
| 9. Gondardehi. | 21. Phuljhar |
| 10. Fingeswar. | 22. Kolabira |
| 11. Pandaria. | 23. Rampur. |
| 12. Pendra. | |

Chanda Zamindaris.

- | | |
|---------------------|-------------------|
| 1. Abiri. | 11. Murangaon. |
| 2. Ambagarh Chauki. | 12. Panabaras. |
| 3. Aundhi. | 13. Palasgarh. |
| 4. Dhanora. | 14. Rang. |
| 5. Dudhmala. | 15. Sirsundi. |
| 6. Gewarda. | 16. Sonsai. |
| 7. Jharapapra. | 17. Chandala. |
| 8. Khutgoon. | 18. Gilgaon |
| 9. Koracha. | 19. Pawi Mutanda. |
| 10. Kotgal. | 20. Pategaon. |

Chhindwar Jagirdaris.

- | | |
|----------------|--------------------|
| 1. Harai. | 7. Pachmarhi. |
| 2. Chhater. | 8. Partabgarh |
| 3. Gorakhghat. | 9. Almod. |
| 4. Gorpani. | 10. Sonpur. |
| 5. Baktagarh. | 11. Bariam Pagara. |
| 6. Bardagarh. | |

* The words, "The Family Domains of the Maharaja of Benares, comprising the following parganas—Bhadohi and Kheyra Mangrorin in the Mirzapur District; Kaswa Raja in the Benares District," which were repealed by Act XIV. of 1881, s. 14, have been omitted.

PART VII.

The Chief Commissionership of Coorg.

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.*

PART IX.

The Chief Commissionership of Ajmer and Marwar.

PART X.

The Chief Commissionership of Assam.

PART XI.†

The Hill Tracts of Arakan.

PART XII.†

The Pargana of Manpur.

PART XIII.

[Repealed† by Act VII. of 1891, Sch. I.]

* The Little Oocos Island has been transferred to the administration of the Chief Commissioner of Burmah and ceased to be part of this Scheduled District on Nov. 29, 1882.—See Act VIII. of 1883 s. 4. The Government of India Act, 1870 (33 Vict., c. 3), has been applied to these territories.

† The Government of India Act has been applied to these territories.

‡ The words repealed were: "The Cantonment of Morar," which was ceded to the Gwalior State on March 10, 1886.—See *Gazette of India*, July 132, 1886, Pt. I., p 453.

THE SECOND SCHEDULE.

(See Section 2.)

Number and year.	Title.
XI. of 1846 ...	An Act for the exemption of certain Territory in the Province of Candeish and the Zillah Ahmednuggur from the operation of the General Regulations.
XXXVII. of 1855 ...	An Act to remove from the operation of the General Laws and Regulations certain Districts inhabited by Sonthals and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose.
X. of 1857 ..	An Act to amend Act XXXVII. of 1855.
XXII. of 1860 ...	An Act to remove certain tracts on the Eastern border of the Chittagong District from the jurisdiction of the tribunals established under the General Regulations and Acts.
XIV. of 1861 ...	An Act to remove certain tracts of Country in the Rohilkund Division from the jurisdiction of the tribunals established under the General Regulations and Acts.
XIX. of 1864 ...	An Act to remove certain tracts of Country in the District of Mirzapore from the jurisdiction of the local Courts.
IV. of 1868 ...	An Act to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.
XXII. of 1869 ...	An Act to remove the Garo Hills from the jurisdiction of the tribunals established under the General Regulations and Acts and for other purposes.

BENGAL ACT.

IV. of 1868 ...	An Act to amend Act XXII. of 1860 (to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the General Regulations and Acts).
-----------------	--

ACT XV. OF 1874.**The Laws Local Extent Act.**

RECEIVED THE G.-G.'s ASSENT ON THE 8TH DECEMBER 1874,

*An Act for declaring the local extent of certain Enactments
and for other purposes.*

WHEREAS it is expedient to declare the local extent of certain Acts passed by the Governor-General of India in Council, the Legislative Council of India, and the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations; And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St. George and Bombay, and in the Lower and the North-Western Provinces of the Presidency of Fort Willim in Bengal : It is hereby declared and enacted as follows :—

Short title.

1. This Act may be called "The Laws Local Extent Act, 1874"

Interpretation-clause.

2. In this Act the expression "Scheduled Districts" means the territories mentioned in the sixth schedule hereto annexed.

Local extent of Acts in first schedule.

3. The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Scheduled Districts.

Local extent of enactments in second schedule.

4. The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government to the Governor of Fort St. George in Council, except the Scheduled Districts subject to such Government

Local extent of enactments in third schedule.

5. The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Governor of Bombay in Council, except the Scheduled Districts subject to such Government.

Local extent of enactments in fourth schedule.

6. The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Lieutenant-Governor of Bengal, except the Scheduled Districts subject to such Government

7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, except the Scheduled Districts subject to such government.

Local extent of enactments in fifth schedule.

8. Nothing herein contained shall—

(a) bar the power of the Governor-General in Council or the Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first Schedule.

(b) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power ;

(c) affect the operation of any Act or Regulation heretofore extended to, or declared to be in force in, any of the Scheduled Districts ;

(d) revive any enactment which has been repealed either generally or with reference to some special subject ;

(e) [*Repealed by Act VIII. of 1887, s. 2.*]

(f) [*Repealed by Act XII. of 191, Sch. I.*]

(g) [*Repealed by Act VIII. of 1890.*]

(h) [*Repealed by Act VIII. of 1887, s. 2.*]

(i) [*Repealed by Act IV. of 1894.*]

(j) extend to any of the Towns of Calcutta, Madras, and Bombay any law not now in force therein ;

(jj)* extend to Pargana Bhadhi or Pargana Kheyra Mangrur in the Mirzapur District, or to Pargana Kaswa Raja in the Benares District, any law not now in force therein ;

(k) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

9. [*Repealed by Act XII. of 1876.*]

* Cl. (jj) has been inserted by Act XIV. of 1891, s. 15.

FIRST SCHEDULE.*

(See section 3.)

ACTS OF THE SUPREME COUNCIL.

YEAR AND NUMBER.			SUBJECT.
1836,	XXVI.†	...	<i>Governor-General's Camp Police.</i>
1837,	IV.	.	Power to acquire land.
1838,	XXV.	...	Wills executed before the 1st January 1866.
1839,	XXIX.	...	Dower, when marriage was contracted before 1st January 1866.
"	XXX.		Inheritance where descent took place before 1st January 1866.
"	XXXII.	...	Interest.
1840,	VI.	...	<i>Bills of exchange.</i>
1841,	X.	...	Registration of ships.
"	XI.	...	<i>Military Courts of Requests.</i>
"	XVIII.	...	<i>Exportation of Military Stores.</i>
"	XIX.	...	Curators in cases of successions.
1842,	IX.	...	<i>Lease and Release.</i>
"	XII.	...	<i>Military Bazaars.</i>
1843,	V.	...	Slavery.
1847,	XX.	...	<i>Copyright.</i>
1850,	V.	...	Coasting Trade.
"	XI.	...	Navigation Laws.
"	XII.	...	Default of Public Accounts.
"	XVIII.	...	Protection of Judicial Officers.
"	XIX.	...	Binding of Apprentices.
"	XXI.	...	Non-forfeiture of rights by loss of Caste.
"	XXXIV.	...	State Prisoners.
"	XXXVII.	...	Inquiries into the behaviour of public servants.
1852,	XXX.	...	Naturalization of Aliens.
"	XXXIII.	...	<i>Enforcement of Judgments of Charter Courts and Military Courts of Requests</i>
1853,	II.	...	Burdens on land.
1854,	XVIII.‡	...	<i>Railways.</i>
"	XXXI.	...	Barring entails: Conveyance by married women.
1855.	XI	...	<i>Mesne-profits and improvements.</i>
"	XII.	.	Executors and Administrators.

* So much of Sch. I. as relates to Acts XI. of 1841, XII. of 1842, XXXII. of 1852, and III. of 1859, has been repealed by Act VIII. of 1887, s. 2; so much as relates to Act VI. of 1840, by Act XXVI. of 1881, s. 2; so much as relates to Act XVIII. of 1841, by Act XI. of 1878; so much as relates to Act XXVII. of 1860, by Act VII. of 1889, s. 2, and Sch. I.; so much as relates to Acts XI. of 1835 and X of 1867 by Act IX of 1887; so much as relates to Acts IX of 1842, XVIII. of 1854, VIII. of 1859, XIV. of 1859, XV. of 1859, XXXIII. of 1861, VI. of 1863, X. of 1866, and X of 1868, by Act XII. of 1891, Sch. I.

† So much of Act XXVI. of 1836 as has not been repealed has been repealed by Act XII. of 1891, Sch. I.

‡ Act XVIII. of 1854 has been repealed by Act. IV. of 1879, which again has been repealed by Act IX. of 1890.

FIRST SCHEDULED—*continued.*

(See section 3.)

ACTS OF THE SUPREME COUNCIL—*continued.*

YEAR AND NUMBER.	SUBJECT.
" XIII. ...	Compensation for loss occasioned by death caused by actionable wrong.
" XXIII. ...	Administration or mortgaged estates in cases of descents occurring or devised made before the 1st January 1866.
" XXIV. ...	Penal Servitude.
" XXVIII. ...	Interest.
1856, IX. ...	Bills of Lading.
" XI. ...	Desertion by European Soldiers.
1856, XV. ...	Marriage of Hindu Widows.
1857, XI. ...	Offences against the State.
" XXV. ...	Forfeiture by Mutineers.
1858, III. ...	State Prisoners.
" XXXV. ...	<i>Estates of Lunatics not subject to jurisdiction of Supreme Courts.</i>
" XXXVI. ...	<i>Lunatic Asylums.</i>
1859, I. ...	Merchant Seamen.
" III. ...	Cantonment Joint Magistrate,
" VIII*. ...	<i>Civil Procedure.</i>
" IX. ...	Sections 16, 17, 18 and 20—Forfeitures.
" XIV (sec, 15)† ...	<i>Suits to recover possession of land.</i>
" XV. ...	<i>Patents.</i>
1860, XXI. ...	Registration of Societies.
" XXVII. ...	<i>Collection of debts on Successions.</i>
1861, LX†. ...	<i>Minors.</i>
" XXXII*. ...	<i>Amending Civil Procedure Code.</i>
1862, III. ...	Government Seal.
1863, V§. ...	<i>Sea Customs.</i>
" XVI. ...	Excise Duty payable on Spirits used in Arts and Manufactures.
" XXIII. ...	Claims to waste-lands.
" XXXI. ...	Gazette of India.
1864, II. ...	Foreigners.
" VI. ...	Whipping.
" III. ...	Common Carriers.
" XI. ...	<i>Mofussil Courts of Small Causes.</i>

* Acts VIII of 1859 and XXIII of 1861 have been repealed by Act X of 1887. These references are to be read as applying to Act XVI of 1862—See s. 3, cl. (2), of that Act.

† S. 15 of Act XIV of 1859 has been repealed in the whole of British India, except the Scheduled Districts, by Act I of 1877.

‡ Act IX of 1861 has been repealed by Act VIII of 1890. This reference is to be read as if made to that Act—See Act VIII of 1890, s. 2.

§ Act VI of 1863 has been repealed by Act VIII of 1878. This reference is to be read as if made to that Act.—See Act VIII of 1878, s. 2.

FIRST SCHEDULE—*continued.*

(See section 8)

ACTS OF THE SUPREME COUNCIL.—*concluded.*

YEAR AND NUMBER.	SUBJECT.
" XV ...	Marriage and Divorce among Parsees.
" XXI ...	Intestate succession among Parsees.
1866, V* ...	<i>Bills of Exchange Commercial Law.</i>
" XI† ...	<i>Companies.</i>
" XXI ...	Dissolution of Marriages of Native Converts.
1886, XXVIII ...	Trustees and Mortgagees' Powers.
1867, X ...	<i>References by Courts of Small Causes in the Mofussil.</i>
" XXV ...	Printing Presses, &c.
1868, XI† ...	<i>Amending Consolidated Customs Act.</i>
1869, XV ...	<i>Evidence of Prisoners.</i>
1870, I ...	<i>Quarantine.</i>

* The Preamble part of s. 1 and s. 15 are the only parts of Act V of 1866 which are now in force, the rest having been repealed by Acts IX. of 1872, X of 1877 (as amended by Act XII of 1879, s. 99), and XXVI of 1881.

† Act X of 1866 has been repealed by Act VI of 1882. This reference is to be read as if made to that Act.—See Act VI of 1882, s. 2.

‡ Act X of 1868 has been repealed by Act VIII of 1878. This reference is to be read as if made to that Act.—See also Act VIII of 1878, s. 2.

SECOND SCHEDULE.*

(See Section 4.)

(a).—MADRAS REGULATIONS.

YEAR AND NUMBER.	SUBJECT.
1802, III† (ss. 1, 11, part of s. 16 only.)	Procedure of Civil Courts.
" (V., s. 30)† ...	Sadr Adalat to act according to justice, &c.
" XII† ...	Records of Courts.
" XIX (s. 2) ...	Covenanted Civil Servants forbidden to lend.
" XXV ...	Settlement of Land-revenue.

* So much of Sch. II. (a) as relates to Mad. Regs. I. of 1819, III of 1831, and VII of 1832, and to s. 4 of Mad. Reg. IV of 1821, has been repealed by Act XII of 1876; so much as relates to Mad. Reg. XI of 1832, by Act VI of 1878; so much as relates to Mad. Reg. XIV of 1832, by Act XIII of 1889, s. 2 and sch; and so much as relates to Mad. Reg. III of 1802, s. 11, I of 1805, II of 1807, IV of 1816, IX of 1816, and XIV of 1816, by Act XII of 1891, Sch. I.

† S. 11 and part of s. 16 of Mad. Reg. III of 1802 have been repealed by Act XII of 1876.

‡ Regulations V and XIII of 1802 have been repealed by Act (XI of 1901.) Sch. III.

SECOND SCHEDULE—*continued.*

(See section 4.)

(a.)—MADRAS REGULATIONS—*continued.*

YEAR AND NUMBER.		SUBJECT.
"	XXVI (ss. 1, 2 & 3 only.)	Registration of malguzari land.
"	XXIX	Karnams.
1803,	I	Board of Revenue.
"	II	Conduct of Collectors, &c.
1804,	V	Court of Wards.
1805,	I	<i>Salt-revenue.</i>
1806,	II (section 7, clause second).*	<i>Collectors and Karnams.</i>
1807,	II	<i>Salt-revenue.</i>
1808,	VII	Martial Law.
1816,	IV	<i>Village Munsifs.</i>
"	V	<i>Village Panchayats.</i>
"	IX† (s. 43 only.)	<i>Prosecution of Zila Magistrates.</i>
"	XI	Sections 8, 9, 10—Heads of villages: Section 11, cl. (1)—Stolen property: Section 13—Discovery of corpses: Section 14—Register of persons confined by heads of villages; and Section 47—Magistrates charged with maintenance of peace.
"	XII	Reference of claims regarding land and produce to Village and District Panchayats.
"	XIV†	<i>Native Pleaders.</i>
1817,	VII	Maintenance of Bridges, &c.; Escheats.
"	VIII (s. only) ...	Sale for arrears of revenue of estate belonging to Native Officer or Soldier.
1819,	I	<i>Land-revenue.</i>
1819,	II	State Prisoners.
1821,	IV§	Petty thefts.
1822,	IV	Explanation of Madras Regulation XXV., 1802.
"	VII (cl (1) of s. 3 only.)	Native Officers in Revenue and other Public Departments.
1822,	IX	Embezzlement by public servants and malversation in revenue matters.
1823	III	Powers of Subordinate and Assistant Collectors.
1828,	VII	Hindu Wills and Estates.
1829,	V	Prohibition of Widow-burning.
1830,	I	<i>Unlawful assemblies; threatening officers; ryots refusing to attend at annual settlement.</i>
1831.	III	

* This parenthetical clause of Mad. Reg. II of 1806 has been substituted for "(parts of ss. 1 and 7)" by Act XII of 1891 Sch. II. The whole of Reg. II of 1806, except the second clause of s. 7, has been repealed by Act XII of 1876.

† The whole of Mad. Reg. IX of 1816 has been repealed by Act XVI, of 1874.

‡ Mad. Reg. XIV of 1816 has been repealed by Mad. Act II of 1882.

§ S. 6.

SECOND SCHEDULE—*continued.*

(See section 4.)

MADRAS REGULATIONS.—(*concluded.*)

YEAR AND NUMBER.			SUBJECT.
1831,	V	(s. 7, cl. (2) only).	Liability of Ministerial Officers for reception of improperly-stamped document.
"	VI	...	Hereditary Village Officers.
"	X	...	Prohibition of Sale of Estates of Minors for Areas of Revenue.
1832,	III	...	Limitation for Suits against orders of Revenue Authorities under Madras Regulation VII of 1828.
"	VII	...	<i>Cantonments.</i>
"	XI	...	<i>Hidden Treasure.</i>
"	XIV	...	<i>Purchase of clothes from Soldiers.</i>

(b)*—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY.

YEAR AND NUMBER.			SUBJECT.
1837,	XXXVI	...	Criminal Jurisdiction of Collectors.
1838,	XII	...	<i>Hidden Treasure.</i>
1839,	VII	...	Tahsildars.
1840,	VIII	...	Awards of Panchayats.
"	XVII	...	<i>Penalties for breach of Salt Laws.</i>
1844,	VI	...	Duties.
1846,	I†	...	<i>Pleaders.</i>
"	IX	...	Harbours.
1849,	X	...	Commissioners of Revenue.
1852,	VII	...	<i>Penalties for breach of Salt Laws.</i>
1853,	XX†	...	<i>Pleaders.</i>
1855,	X†	...	Section 10—Recusant witnesses.
"	XIV§	...	<i>Military Bazzirs.</i>
"	XXI	...	Minors.
1856,	VIII||	...	<i>Control of Gaols.</i>

* So much of Sch. II(b) as related to Acts XII of 1838, XIV of 1855, VIII of 1856, and XXIV of 1869, has been repealed by Acts VI of 1878, VIII of 1878, XII of 1876, and XVIII of 1877, respectively; and so much as relates to Acts XVII of 1840, VII of 1852, and XI of 1869, by Act XII of 1891 Sch. I.

† Acts I of 1846 and XX of 1853 were repealed by Act XVIII of 1879, s. 43, as amended by Act IX of 1884, s. 9, in places to which s. 42 of Act XVIII of 1879 extends.

‡ Acts X of 1855 has been repealed by Act (XI of 1901), Sch. III.

§ Act XIV of 1855, has been repealed by Act XIV of 1874.

|| Act XI of 1869 has been repealed by Act XI of 1882.

SECOND SCHEDULE—*concluded*.

(See section 4.)

(b.)—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS
PRESIDENCY—*concluded*.

YEAR AND NUMBER.	SUBJECT.
1857, VII	Uncovenanted Agency
1858, I	Compulsory Labour.
" XIV	Minors.
1859, XXIV	Police.
1860, XXVIII	Boundary Marks.
1869, XI*	Land Customs.
" XXIV†	Salt.

* Act VIII. of 1856 has been repealed by Act IX of 1894.

† Act XXIV of 1869 has been repealed in places to which Act XI of 1875 (Madras Salt Act) is extended.

THIRD SCHEDULE.*

(See Section 5.)

(a.)—BOMBAY REGULATIONS.

YEAR AND NUMBER.	SUBJECT.
1827, II	Section 21 (caste questions;) sections 47 to 54 (inclusive) and section 56 (pleaders.)
" IV†	Section 26 (law applicable to suits;) section 69, clauses <i>second</i> and <i>third</i> (attachment and distraint of crops.)
" V	Preamble: section 9 (acknowledgments of debt;) section 14 (interest;) section 15 (mortgages and pledges.)

* So much of Sch. III (a) as relates to Bom. Regs. XII of 1827, preamble, XVI of 1827, and XXI of 1827, has been repealed by Act XII of 1891, Sch. I; and so much as relates to ss. 18, 19, 20, 45, 46, and 47 of Bom. Reg. XXII of 1827, by Act XIII of 1889 s. 2 and Sch.

† Cls. (2) and (3) of s. 69 of Bom. Reg. IV of 1827 have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom. Act V of 1879.

THIRD SCHEDULE—*concluded.*

(See section 5.)

(a.)—BOMBAY REGULATIONS—*concluded.*

YEAR AND NUMBER.	SUBJECT.	
" VIII	Administration of Estates.	
" XII*		
" XIII	Preamble: section 19 (<i>Magistrate's power to make rules</i>); section 20 (standards of weights and measures); section 27, clause 2 (supervision of suspected persons); section 37, clause <i>first</i> and <i>second</i> (responsibility of villages for robberies.)	
" XVI	Section 34, clause <i>third</i> (letter substituted for summons.)	
" XVII	Revenue Administration.	
" XVIII	Sections 1 to 16 inclusive (<i>Duty on opium</i>): sections 46, 54 to 66 inclusive (<i>spirits</i>): sections 67 to 73 inclusive (<i>penalties</i>).	
" XIX	Section 18 (<i>furnishing false certificates to soldiers</i>): section 19 (<i>buying uniform arms &c.</i>) section 20 (<i>recovery of value of embezzled stores</i>). sections 40, 41, 42, 43, (passage of troops): sections 45, 46, 47 (<i>requisitions for military aid</i>).	
1870 XXV	State Prisoners	
" I	Section 1 (<i>Revenue Commissioners</i>) section 2, clauses (1), (2), (3) (<i>Collectors and Sub-Collectors</i>).	
" XIII	Civil jurisdiction of Jagirdars.	
1831, XVI	Village Patels,	
1832, VII	Realization of Revenue.	
1853. I	Hereditary Officers.	

* The preamble and part of s. 19 of Bom. Reg. XII of 1827 have been repealed by Act XVII, of 1862.

† Bom. Regs. XVI of 1827, V of 1830, XV of 1831, II of 1832, and V of 1833, have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom. Act V of 1879.

‡ Bom. Reg. XXI of 1827 has been repealed by Bom. Act V of 1878.

§ Bom. Regs. XVI of 1827, V of 1830, XV of 1831, II of 1832, and V of 1833, have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom. Act V of 1879.

¶ So much of Sch. III (b.) as relates to Acts XI of 1843, III of 1852, and XXI of 1852, has been repealed by Act XII of 1891, Sch. I.

THIRD SCHEDULE—*concluded.*

(See section 5)

(b.)—ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY †

YEAR AND NUMBER				SUBJECT.
1838,	XVI	...	...	Judiciary.
"	XVIII*	<i>Sureties.</i>
"	XIX	...	...	Coasting Vessels.
1839,	XX	...	...	Revenue.
1840,	XV	...	...	Agents of Foreign Sovereigns
1842,	XVII*	<i>Revenue.</i>
"	XVII§	...	...	<i>Revenue Commissioners.</i>
1843,	XI†	...	...	<i>Hereditary Officers.</i>
1844,	XIX	...	...	Abolition of town Duties.
1846,	I	...	...	Pleaders.
"	III	...	...	Sections 1, 5, and 6—Boundary Murders.
1852,	III¶	...	...	<i>Spintuous Liquors.</i>
"	XXI§	...	...	<i>Deputy Collector.</i>
1853,	XX	...	...	Pleaders.
1855,	X	...	...	Section 10—Recusant Witnesses.
1856,	VIII	...	...	Control of Goals.
1864,	XX	...	...	Minors.

FOURTH SCHEDULE §

(See section 6.)

(a.)—BENGAL REGULATIONS (LOWER PROVINCES).

YEAR AND NUMBER.				SUBJECT.
1793,	I	...	...	Perpetual Settlement
"	II	...	...	Collection of Land Revenue.
"	VIII	...	...	Rules for Decennial Settlement.
"	XI	...	...	Native laws of inheritance to Revenue-paying land.
"	XIX	...	...	Title to lands exempt from Revenue.
"	XXXVII	...	...	Title to lands exempt from Revenue under badshahi grants.
1793,	XXXVIII	.	.	Section 1—Preamble: Section 2.—Prohibition of loans by Convoanted Servants.

* Acts XVIII of 1838, XIII and XVII of 1842, III of 1846, and XXI of 1852, have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom. Act V of 1879.

† Act XI of 1843 has been repealed by Bom. Act III of 1874.

‡ Act III of 1852 has been repealed by Bom. Act V of 1878.

§ So much of Sch. IV. (b) as relates to Ben. Regs. XLVIII. of 1803, III. of 1794, s. 12, V. of 1797, I. of 1798, XVII. of 1806, XI. of 1811, XIX of 1814, XX. of 1817, ss. 28 and 32, and VI. of 1819, has been repealed by Act XII. 1891, Sch. 1.; so much as relates to Ben. Reg. XX of 1810, by Act XIII. of 1889, s. 2 and sch.; so much as relates to Ben. Regs. XLVIII. of 1793 and IV. of 1829, by Act XII. of 1876; so much as relates to Ben. Reg. V. of 1817, by Act VI. of 1878; and so much as relates to Ben. Reg. XX. of 1825, by Act X. of 1882.

FOURTH SCHEDULE—*continued.*

(See section 6.)

(a.)—BENGAL REGULATIONS (LOWER PROVINCES—*continued*)

YEAR AND NUMBER.	SUBJECT.
1794, XLVIII† ...	Quinquennial Register of Revenue-paying Lands,
1794, III‡ ...	Sections 12, 13, 16, 17, 18, 19 and 20 arrears of Revenue.
1797, XVI ...	Fees for keeping Revenue Records.
1798, I§ ...	Conditional Sales of Land.
1799, V ...	Wills and Intestacies of Natives
1800, VIII ...	Pargana Register of Lands.
1801, I ...	Arrears of Revenue : Division of Joint Estates
1804, X ...	Punishment by Courts Martial of certain State Offences.
1806, IX ...	Passages of Troops.
" XVII§ ...	Sections 7 and 8—Mortgages and conditional sales.
1810, XIX ...	Maintenance of Bridges, &c ; Escheats,
" XX ...	Camp-followers, Bazars, Cantonments.
1811, XII|| ...	Revision of jama on lands ordered to be divided.
1812, V ...	Collection of Land-Revenue.
" XI ...	Removal of foreign Emigrants.
1814, XLV|| ...	Partition of Revenue paying Estates.
1817, V ...	Hidden Treasure.
" XX ...	Section 28—Abkari; Section 29—Criminal process in Salt and Opium Departments; Section 30, clauses (1), (2), and (5)—Building forts; Collecting sepoy and stores, Encroaching on roads; Section 32—Despatches of treasure.
1818, III ...	State Prisoners.
1819, II ...	Resumption of Revenue free lands
" VI ...	Ferries.
1821, IV ...	Powers of Collectors and Magistrates.
1822, III** ...	Boards of Land-revenue.
" XI ...	Section 36—Khas management of purchases by Government; Section 38—Non-liability of Government for errors of Courts
1823, VI ...	Indigo Contracts.
" VII ...	Prohibition of loans to Covenanted Civil Servants.
1825, VI ...	Passage of Troops.
" IX ...	Defaulting Malguzars.

† Ben. Regs. XLVIII. of 1793 and XV. of 1797 have been repealed by Ben. Act VII. of 1876.

‡ S. 12 of Ben. Reg. III. of 1794 has been repealed entirely, and as far as they relate to the recovery of money belonging to Government.

§ Ben. Act VII. of 1880.

|| Ben. Regs. I. of 1798 and XVII. of 1806 have been repealed by Ben. Act IV. of 1882.

** Ben. Reg. XI of 1811 and XIX. of 1814 have been repealed by Ben. Act VIII. of 1876.

*** Ben. Reg. VI. of 1812 has been repealed by Ben. Act I. of 1876.

**** So much of this Schedule as relates to Bengal Revenue has been repealed in Bengal by Ben. Act I. of 1913.

FOURTH SCHEDULE—*concluded*,

(See section 6.)

(a.) --BENGAL REGULATIONS (LOWER PROVINCES).—*concluded*,

YEAR AND NUMBER.			SUBJECT
	XI	...	Alluvion and Diluvion.
1825	XIII	...	Settlement of resumed Lakhiraj land.
"	XIV	...	Authority to confirm Lakhiraj tenures: Native Grants.
"	X	...	Courts Martial and Military Courts of Requests.
1827	III	...	Section 5—Evidence.
"	V	...	Management of Estates under Attachment.
1828,	III	...	Appeals from decision of Revenue Authorities.
"	IV	...	Section 1 and Section 2, clause (4)—Time during which Collectors are to be considered engaged in making settlements.
1829,	I	...	Commissioners of Revenue and Board of Revenue.
"	XVII	...	Widow-burying
1830	V	...	Section 1 and 5—Indigo Contracts.

(b.)*—ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES,

YEAR AND NUMBER.			SUBJECT.
1836,	X	...	Indigo Contracts.
"	XX†	...	Batwaras.
"	XXI	...	Creating Zilas.
1838,	XX†	...	Remuneration of Amins effecting Partitions.
1841,	XII	...	Section 2—No interest on arrears of Land-revenue.
1847,	X	...	Assessment of new lands.
1848,	XX†	...	Land-revenue.
1850,	XLI,**	...	Board of Revenue.
1855,	XXXII†	...	Embankments.
1856,	XII	...	Civil Court Amins.
"	XY	...	Chaukidars.
"	XXI§	...	Abhari.
1857,	XIII	...	Opium.
1858,	XXXI	...	Settlement of alluvion.
"	XL	...	Minors.
1859,	XI	...	Sales for Arrears of Revenue.
1860,	XXIII||	...	Abhari.

* So much of Sch. IV (b) as relates to Acts XX of 1836, XI of 1838, XX and XXI of 1836, and XXIII of 1860, has been repealed by Act XII of 1891, Sch. I.

† Acts XX. of 1836 and XI. of 1838 have been repealed by Ben. Act VIII. of 1876.

‡ Act XXXII. of 1855 has been repealed (except as to Orissa and the Sundarbans) by Ben Act VI. of 1873.

§ Act XXI. of 1856 has been repealed in the Lower Provinces by Ben. Act VII. of 1873.

|| Act XXIII. of 1860 has been repealed in the Lower Provinces by Ben. Act XI. of 1876.

After this Act XIX of 1853 has been repealed by Act I of 1903 and so much of this schedule as relates to Act XLIV of 1850, has been repealed in Ben. by Ben. Act VII of 1913 and in Behar and Orissa by B. & O. Act I of 1913.

